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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 BEFORE THE HONORABLE MARILYN HALL PATEL, JUDGE
7

8 UNITED STATES OF AMERICA,)
9 PLAINTIFF,)
10 VS.) NO. CR 07-0765 MHP
11 MENDEL, BEKER, ET AL.,)
12 DEFENDANTS.)
13

14 SAN FRANCISCO, CALIFORNIA
15 THURSDAY, OCTOBER 28, 2010
16

17 **TRANSCRIPT OF PROCEEDINGS**
18

19 **APPEARANCES:**
20

21 FOR PLAINTIFF: UNITED STATES ATTORNEY
22 450 GOLDEN GATE AVENUE
23 SAN FRANCISCO, CALIFORNIA 94102
24 BY: **JEANE HAMILTON**
25 DAVID J. WARD
ASSISTANT UNITED STATES ATTORNEY

FOR DEFENDANT
26 BEKER: WINSTON & STRAWN
27 101 CALIFORNIA ST.
28 SAN FRANCISCO, CA 94111
29 BY: **JONATHAN ROBERT HOWDEN**
30 ATTORNEY AT LAW

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32 (APPEARANCES CONTINUED ON FOLLOWING PAGE)
33

34 REPORTED BY: JAMES YEOMANS, CSR #4039, RPR
35 OFFICIAL REPORTER
36

37 COMPUTERIZED TRANSCRIPTION BY ECLIPSE
38

1 **APPEARANCES: (CONTINUED)**2 FOR DEFENDANT
3 BEKER: MARTHA A. BOERSCH
4 ATTORNEY AT LAW
5 555 CALIFORNIA ST.
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7 SAN FRANCISCO, CA 941048
9 FOR DEFENDANT WILLIAM OSTERHOUDT
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1 THURSDAY, OCTOBER 28, 2010

2:00 P.M.

2 (THE FOLLOWING PROCEEDINGS WERE HEARD IN OPEN COURT:)

3 THE CLERK: CALLING CRIMINAL 07-0765, UNITED STATES
4 VERSUS MENDEL BECKER, ET AL.

5 THE COURT: MAY I HAVE YOUR APPEARANCES, PLEASE.

6 MS. HAMILTON: GOOD AFTERNOON.

7 JEANE HAMILTON REPRESENTING THE UNITED STATES.

8 MR. WARD: GOOD AFTERNOON.

9 DAVID WARD FOR THE UNITED STATES.

10 MR. HOWDEN: GOOD AFTERNOON.

11 JONATHAN HOWDEN AND MARSHA BOERSCH ON BEHALF OF
12 MR. MENDEL BECKER.

13 MR. OSTERHOUDT: GOOD AFTERNOON.

14 WILLIAM OSTERHOUDT AND ANN MOORMAN ON BEHALF OF
15 MR. NEWCON.

16 **THE COURT:** WE DISPOSED OF THE MOTIONS IN LIMINE, I
17 DON'T SEE THERE ARE ANY NEW ONES. I'M NOT SUGGESTING THERE
18 SHOULD BE, BY ANY MEANS, BUT WHAT ARE WE GOING TO TAKE UP?

19 I'VE SEEN REFERENCES IN YOUR OBJECTIONS TO THEIR JURY
20 INSTRUCTIONS AND, YOU KNOW, I LIKE TO RESOLVE JURY INSTRUCTIONS
21 AT A PRETRIAL, BUT I DIDN'T SEE YOUR SET OF JURY INSTRUCTIONS.

22 MS. HAMILTON: WELL, YOUR HONOR --

23 **THE COURT:** YOU REFERRED TO THEM BY NUMBER, BUT DID
24 YOU FILE THEM? BECAUSE WE LOOKED FOR THEM.

25 MS. HAMILTON: YOUR HONOR, THEY'VE NOT BEEN FILED.

1 WE'RE FINALIZING, WE'RE TRYING TO GET TO THE POINT WHERE BOTH
2 PARTIES, WE CAN PRESENT TO YOU A SET OF JURY INSTRUCTIONS THAT
3 BOTH PARTIES AGREE TO.

4 AND TO THE EXTENT THERE MIGHT BE MORE IN WHICH THE
5 PARTIES DON'T AGREE, THEN THOSE ARE FILED SEPARATELY. IT'S
6 JUST WE'RE VERY LAST PART OF FINALIZING VERY LAST PIECES.

7 **THE COURT:** THE ONES THAT WERE SUBMITTED BY THE
8 DEFENDANT AND TO WHICH YOU HAVE SUBMITTED OBJECTIONS, ARE THOSE
9 THE ONES THAT, THE ONLY ONES THAT NEED TO BE FINALIZED?

10 **MS. HAMILTON:** NO, YOUR HONOR. THE ONES --

11 **THE COURT:** THAT WAS TOO MUCH TO HOPE FOR.

12 **MS. HAMILTON:** YOUR CUP WAS HALF FULL, YOUR HONOR.
13 WHERE WE ARE NOW, THERE'S STILL DEBATE ABOUT THE LANGUAGE IN
14 THE WIRE FRAUD COUNTS, AND WE WERE IN THE PROCESS OF CONFERRING
15 WITH COUNSEL.

16 BUT AFTER RECEIVING THEIR PROPOSED JURY INSTRUCTIONS
17 FOR THE WIRE FRAUD SECTION, DIDN'T HAVE THAT OPPORTUNITY TO
18 PRESENT ANY OBJECTIONS ON THEIRS.

19 SO WHEN THEY FILED, WHEN THE DEFENDANTS FILED THEIR
20 WIRE FRAUD JURY INSTRUCTIONS, THEN WE FILED THE OPPOSITIONS
21 BECAUSE THERE WAS NO WAY TO GET, AT LEAST, THAT ISSUE BEFORE
22 THE COURT.

23 WHAT'S STILL LEFT, THERE ARE ISSUES REGARDING KIND OF
24 SOME CONSPIRACY LANGUAGE AND THE LANGUAGE FOR THE SCHEME TO
25 DEFRAUD. MOST OF IT IS FROM MODEL JURY INSTRUCTIONS.

1 IT'S JUST GETTING TO THE LAST PART, SO WE DON'T HAVE
2 TWO SETS OF JURY INSTRUCTIONS THAT JUST HAVE DIFFERENCES IN
3 VERBIAGE.

4 **MS. BOERSCH:** THERE'S GOING TO BE A SET, I DON'T KNOW,
5 DAVID, WHAT YOU THINK? ABOUT A DOZEN OR MORE INSTRUCTIONS, I
6 THINK, WE'RE GOING TO ABLE TO AGREE ON.

7 THEN THERE'S GOING TO BE A SET OF THE GOVERNMENT'S
8 PROPOSED INSTRUCTIONS RELATED TO THE WIRE FRAUD COUNTS THEY ARE
9 PROPOSING THAT WE DON'T AGREE TO, SO WE WILL DIRECT YOU TO
10 THOSE.

11 THEY LIKEWISE OBJECT TO OUR PROPOSED INSTRUCTION ON
12 THE WIRE FRAUD COUNTS.

13 **THE COURT:** DO WE HAVE THEM SUFFICIENTLY JELLED BEFORE
14 US, IF WE CAN TAKE UP THE ONES, FOR EXAMPLE, THERE OBJECTIONS
15 TO, OR I HATE TO GO THIS PROCESS AND FIND OUT THAT, YOU KNOW,
16 THEN I'M GOING TO GET A WHOLE NEW SET OF INSTRUCTIONS RELATED
17 TO THE SAME ISSUES OR WHATEVER.

18 **MR. WARD:** I THINK, THE CORE DISAGREEMENT REVOLVES
19 AROUND THE WIRE FRAUD INSTRUCTIONS. I THINK, IT WOULD BE
20 BETTER FOR THIS COURT TO SEE THE GOVERNMENT'S PROPOSED WIRE
21 FRAUD INSTRUCTIONS.

22 AND WE WILL INCLUDE THEIR OBJECTIONS TO THOSE
23 SIDE-BY-SIDE WITH THE THREE WIRE FRAUD INSTRUCTIONS THAT THEY
24 FILED, SO THAT YOUR HONOR HAS ALL OF THE --

25 **THE COURT:** I SORT OF CAN PICTURE IT IN MY MIND,

1 LOOKING AT YOUR OBJECTIONS AND LOOKING AT WHAT THEY HAVE TO --
2 LOOKING AT WHAT THEY SUBMITTED.

3 WHAT ARE WE GOING TO DO TODAY THEN?

4 **MR. HOWDEN:** I THINK, SCHEDULING IS ONE OF THE ISSUES
5 WE OUGHT TO ADDRESS.

6 **THE COURT:** I THOUGHT WE HAD DONE THAT.

7 **MR. HOWDEN:** WE UNDERSTOOD THERE WAS SOME CONCERN
8 WHETHER OR NOT THERE WAS ENOUGH TIME TO GET THE TRIAL IN BEFORE
9 DECEMBER 2ND.

10 **THE COURT:** I HAD CONCERN BECAUSE, ACTUALLY, I THINK,
11 THE TRIAL I'M IN NOW IS GOING TO FINISH MAYBE EVEN FASTER THAN
12 THEY THOUGHT IT WAS GOING TO FINISH, BUT WE CAN PROBABLY START
13 ON THIS CASE NEXT WEEK.

14 BUT WHAT GENERATED MY CONCERN WAS THESE SUBMISSION,
15 WAS SIGNING OFF FOR LETTERS ROGATORY AND OTHER KIND OF THINGS
16 BEING OBTAINED FROM OVERSEAS. HOW IS THIS EVER GOING TO BE
17 DONE IN TIME FOR THE TRIAL DATE WE HAVE?

18 **MR. HOWDEN:** IT'S A SUBSTANTIAL PROBLEM FOR US, YOUR
19 HONOR, BUT I DON'T SEE IT --

20 **THE COURT:** LET'S FIGURE OUT WHAT WE'RE GOING TO DO
21 ABOUT IT. CAN'T SORT OF DO A HALF TRIAL, RIGHT?

22 **MR. HOWDEN:** WELL, WOULD PROPOSE THERE IS AN
23 ALTERNATIVE WAY TO GET THOSE FOREIGN COURT RECORDS INTO
24 EVIDENCE UNDER 902. AND WE WOULD HOPE TO BE ABLE TO MAKE
25 SUFFICIENT SHOWING FOR THE COURT, SO THAT THE COURT COULD FIND

1 THAT THEY'RE ADMISSIBLE, IN ANY EVENT.

2 **THE COURT:** BUT WOULDN'T YOU WANT TO DO THAT WELL IN
3 ADVANCE, SO YOU KNOW WHETHER THAT'S GOING TO HAPPEN OR NOT?

4 **MR. HOWDEN:** WE HAVEN'T HAD THAT OPPORTUNITY, SO WE'RE
5 STUCK WITH WHAT WE HAVE.

6 **THE COURT:** I'VE NEVER NOTICED THERE WAS A RELUCTANCE
7 ON THE PART OF LAWYERS TO FILE PAPERS. I WISH THERE WERE
8 RELUCTANCE, BUT WHY DON'T YOU JUST FILE SOMETHING.

9 WE SET THIS AS A PRETRIAL DATE, I THINK, RIGHT?

10 WHAT DID WE SET IT AT, A SCHEDULING DATE ONLY?

11 **MS. HAMILTON:** PRETRIAL DATE.

12 **THE COURT:** THIS WOULD BE THE TIME TO DEAL WITH THAT
13 ISSUE. ARE THEY GOING TO COME IN OR NOT COME IN ON THAT
14 THEORY. IF THEY'RE NOT COMING IN ON THAT THEORY, WHAT ARE YOU
15 GOING TO DO?

16 **MR. HOWDEN:** GOOD POINT, YOUR HONOR. I WILL FILE
17 SOMETHING FORTHWITH.

18 **THE COURT:** WELL, SO WHAT ARE WE GOING TO DO TODAY?

19 **MR. OSTERHOUDT:** WHAT WE DON'T WANT TO DO, YOUR HONOR,
20 IS -- IF WE CAN AVOID IT, LOSE THE TRIAL DATE. BECAUSE WE'VE
21 HAD IT FOR QUITE AWHILE. IT'S IMPORTANT TO THE DEFENDANTS AND
22 PROBABLY TO THE GOVERNMENT.

23 WE DID NOT REALIZE THAT WHEN WE HAD THE DECEMBER 2ND,
24 WE WERE THINKING ABOUT SOME KIND OF PROPOSALS TO GIVE THE COURT
25 FOR YOUR CONSIDERATION, WE -- I DON'T THINK ANYBODY THOUGHT

1 THROUGH VETERANS DAY AND THE DAY AFTER IT, BUT I UNDERSTAND
2 THEY'LL BE A HOLIDAY THE DAY AFTER IT. PROBABLY, WOULD HAVE
3 PROBLEM WITH JURORS WHO WANT TO GO AWAY FOR THE LONG WEEKEND.

4 I GIVE CREDIT TO THE PROSECUTION THAT CALLED OUR
5 ATTENTION IT AT THE LAST PRETRIAL. I DON'T THINK ANYBODY
6 NOTICED IT. THEN WE HAVE THANKSGIVING, WHAT WE CAN DO ABOUT
7 THAT, YOU KNOW.

8 **THE COURT:** GIVE THANKS, I GUESS.

9 **MR. OSTERHOUDT:** GIVE THANKS, THERE YOU GO. SO JUST
10 TALKING AMONG OURSELVES WE WERE, WE DON'T WANT TO OBVIOUSLY GET
11 INTO A SITUATION WHERE THE TRIAL HAS A BREAK AND SEND THE
12 JURORS AWAY FOR A LONG TIME, WE THINK IT WOULD BE BAD.

13 **THE COURT:** THAT'S NOT --

14 **MR. OSTERHOUDT:** THAT'S NOT SOMETHING WE CAN DO. YOUR
15 CALENDAR IS ON MONDAYS, I THINK, YOU NEED, I ASSUME, TO HANDLE
16 MATTERS.

17 ONE POSSIBILITY WE THOUGHT OF WAS TRYING TO GO FULL
18 DAYS MAYBE SOME OF THE TIME, SO THAT WE COULD GET A LITTLE BIT
19 MORE OUT OF EACH DAY, THAT MIGHT BE HELPFUL.

20 WE JUST DIDN'T WANT TO BE IN CRUNCH AT THE OTHER END.
21 I THINK, BOTH PARTIES WE ALL HAVE FLINGS TO SAY WE WANT TO HAVE
22 FULL OPPORTUNITY, OBVIOUSLY.

23 **THE COURT:** WHAT IF YOU CAN'T GET THOSE DOCUMENTS IN?
24 I HAVE NO IDEA, I HAVEN'T THOUGHT ABOUT IT. FIRST I HEARD THAT
25 MIGHT BE SOMETHING THAT WOULD BE RAISED.

1 IF YOU CAN'T GET THOSE DOCUMENTS IN THAT YOU WANT IN
2 THAT, YOU'RE ADDRESSING BY WAY OF THE, I ASSUME, THEN THE
3 LETTERS ROGATORY ARE GOING TO THOSE ISSUES; IS THAT CORRECT?

4 **MR. HOWDEN:** THAT'S CORRECT.

5 **THE COURT:** AND THEN WHAT HAPPENS?

6 **MR. HOWDEN:** IF WE DON'T GET THEM IN, WE DON'T GET
7 THEM IN. WE MAY HAVE TO ASK FOR A CONTINUANCE.

8 I HAVE TO TELL YOU IN ALL CANDOR, EVEN THE STATE
9 DEPARTMENT'S WEBSITE WARNS EVEN OFFICIAL REQUESTS FOR DOCUMENTS
10 FROM RUSSIA SOMETIMES GO COMPLETELY UNANSWERED.

11 **MR. OSTERHOUDT:** FOREVER.

12 **MR. HOWDEN:** FOREVER.

13 **MR. OSTERHOUDT:** WE HATE TO PUT A CASE OVER WITH THAT
14 IN MIND, MAY WE GO OVER FOR --

15 **MS. HAMILTON:** YOUR HONOR, IF I MAY, WE COMPLETELY
16 AGREE WITH THE DEFENSE. THE PROBABILITIES OF RECEIVING ANY OF
17 THOSE DOCUMENTS ARE SLIM FROM RUSSIA. OUR PARTICULAR --

18 **THE COURT:** SLIM RECEIVING THEM AT ALL?

19 **MS. HAMILTON:** YES.

20 **THE COURT:** OR EVER RECEIVING THEM WITHIN THE TIME
21 FRAME WE HAVE NOW?

22 **MS. HAMILTON:** I THINK, RECEIVING THEM AT ALL. IT'S
23 FAIRLY SLIM FROM RUSSIA. AND, I THINK, ALSO JUST TO KIND OF,
24 UNDER THE SPEEDY TRIAL ACT A YEAR IS THE MOST YOU WOULD GET
25 ANYWAY FOR AN OUTSTANDING REQUEST.

1 BUT I AM CONCERNED THAT, I JUST WANT TO MAKE SURE WE
2 DON'T START TRIAL, THEN THE DOCUMENTS HAVEN'T ARRIVED IN TIME
3 AND THEN --

4 **THE COURT:** MY CONCERN, ALL THE DOCUMENTS, I
5 FORGOTTEN, ALL THE DOCUMENTS THAT YOU'RE SEEKING BY VIRTUE OF
6 THE LETTERS, IS THERE ANY OTHER DISCOVERY YOU HAVE OUT WITH
7 RESPECT TO OVERSEAS?

8 **MR. HOWDEN:** NO. THERE WERE --

9 **THE COURT:** THEY ALL RELATE TO DOCUMENTS IN RUSSIA?

10 **MR. HOWDEN:** YES. WE ACTUALLY PRODUCED COPIES OF THE
11 DOCUMENTS WE'RE SEEKING TO YOUR HONOR IN CONNECTION WITH THE
12 TRANSLATIONS.

13 **THE COURT:** I DIDN'T GO THROUGH EACH OF THEM TO
14 DETERMINE IF SOME OF THEM WERE IN SOME OTHER LOCATION OR
15 WHATEVER.

16 **MR. HOWDEN:** SO WE PRODUCED TO YOU THE DOCUMENTS WE'RE
17 SEEKING TO HAVE CERTIFIED.

18 **THE COURT:** DO YOU KNOW, DO YOU EVER GET AN ANSWER OR
19 IS IT JUST A LONG TIME TO GET AN ANSWER?

20 **MS. HAMILTON:** I WOULD SAY, THE ANTITRUST EXPERIENCE
21 IS, COMING OUT OF RUSSIA AT TIMES YOU CAN MAKE REQUESTS AND
22 SOMETIMES THEY'RE ANSWERED AND SOMETIMES THEY'RE NOT. BEING
23 ABLE TO COUNT ON ANY FINALITY, I THINK, IS QUESTIONABLE.

24 **THE COURT:** WHAT ABOUT, IF IN FACT YOU CAN'T GET THOSE
25 DOCUMENTS, AND IF IN FACT THEY'RE RELEVANT AND NECESSARY TO

1 PROVIDING, YOU KNOW, A DEFENSE, WHAT ABOUT THE -- WERE YOU
2 AWARE OF THE FACT THEY WERE THINKING OF RAISING SOME ISSUES
3 UNDER, WHAT SECTION IS IT YOUR LOOKING AT, 900?

4 **MR. HOWDEN:** 902.

5 **THE COURT:** 902. LOOKING AT 902 AND WHETHER THEY
6 WOULD BE ADMISSIBLE UNDER 902, ARE YOU GOING TO FIGHT THAT?

7 **MS. HAMILTON:** YES YOUR HONOR.

8 **THE COURT:** YOU'RE TELLING ME, ON THE OTHER HAND,
9 THEY'RE NOT AVAILABLE?

10 **MS. HAMILTON:** BUT UNDER 902 THERE ARE CERTAIN
11 SAFEGUARDS IN PLACE. WE SENT A STIPULATION OVER TO KIND OF
12 START THIS PROCESS, THERE'S NO WAY THE DOCUMENTS COULD BE
13 AUTHENTICATED. THEY'RE BASICALLY PRINTS OUT OFF A WEBSITE FROM
14 RUSSIA.

15 **MR. HOWDEN:** JUST NOT OFF OF ANY WEBSITE, THE COURT
16 OFFICIAL WEBSITE AND PUBLIC DOCUMENTS THAT WERE MADE AVAILABLE
17 THERE.

18 **THE COURT:** YOU'RE TALKING ABOUT THE DOCUMENTS
19 THEMSELVES THEY'RE FROM THE RUSSIAN GOVERNMENT WEBSITE?

20 **MR. HOWDEN:** THE VARIOUS COURTS' WEBSITE.

21 **MS. BOERSCH:** I THINK, THE ONLY ISSUE IS AUTHENTICITY
22 THAT WE ASKED THE GOVERNMENT TO STIPULATE TO. I DON'T BELIEVE
23 WE ASKED THEM TO STIPULATE TO THE RELEVANCE OR ANYTHING ELSE,
24 JUST THE AUTHENTICITY.

25 **MR. HOWDEN:** NO, JUST THE AUTHENTICITY.

1 **MS. HAMILTON:** OUR POSITION, YOUR HONOR, THERE'S NOT
2 ENOUGH INFORMATION THERE TO FEEL COMFORTABLE STIPULATING TO THE
3 AUTHENTICITY. I THINK, ACTUALLY, INSTEAD OF 902, BECAUSE
4 THEY'RE FOREIGN RECORDS FOR CRIMINAL CASES 18 3505 IS WHAT
5 WE'VE BEEN REVIEWING, FOREIGN CERTIFICATION IS REQUIRED.

6 **THE COURT:** WELL, WHAT ABOUT THAT?

7 THAT LAST LONG SENTENCE IN SUB-PARAGRAPH THREE. IF
8 REASONABLE OPPORTUNITY HAS BEEN GIVEN TO ALL PARTIES TO
9 INVESTIGATE THE AUTHENTICITY AND ACCURACY, THE COURT MAY WITH
10 GOOD CAUSE.

11 **MR. HOWDEN:** THAT'S BASICALLY THE SAME LANGUAGE AT
12 902.

13 **THE COURT:** THAT IS 902. JUST OFF THE TOP OF MY HEAD.

14 **MR. HOWDEN:** WE CAN PROVIDE THE COURT WITH A
15 DECLARATION OF A RUSSIAN LAWYER WHO IS LICENSED TO PRACTICE LAW
16 IN MOSCOW AND IN THE WEST. THAT HE'S REVIEWED THESE COURT
17 RECORDS, HE'S FAMILIAR WITH THESE COURT RECORDS AND THAT AS FAR
18 AS HE CAN TELL THESE ARE ACCURATE COPIES OF THE RECORDS THAT
19 ARE PUBLICLY AVAILABLE ON THE WEBSITE.

20 **MS. HAMILTON:** YOUR HONOR, 902 DOES NOT APPLY. THIS
21 IS A CRIMINAL CASE, THEY'RE FOREIGN RECORDS. IT'S 18 USC 3505
22 AND, I BELIEVE, UNDER 3505 THERE ISN'T THE SAME LEEWAY IN TERMS
23 OF TRUSTWORTHINESS.

24 I'M JUST LOOKING REALLY BRIEFLY. WOULD -- 3555(A)(1)
25 LARGE D SAYS, THE METHOD OF, UNLESS THE SOURCE INFORMATION OR

1 METHOD OR CIRCUMSTANCE PREPARATION INDICATE LACK OF
2 TRUSTWORTHINESS, CAN FIND PRETTY MUCH ANYTHING ON THE WEB AND,
3 I THINK, THAT THAT'S A CONCERN.

4 **MR. HOWDEN:** WELL, I THINK, THE FACT THESE ARE THE
5 OFFICIAL COURT WEBSITES COUPLED WITH THE PRACTICING LAWYER'S
6 TESTAMENT AS TO THEIR AUTHENTICITY GOES A LONG WAY TO
7 ESTABLISHING, AT LEAST, THE FOUNDATION TO THEIR AUTHENTICITY.

8 ESPECIALLY IN LIGHT OF THE FACT THERE'S LIKELY NO
9 OTHER WAY TO CERTIFY THEM. THE POINT IS ONE THAT COULD GO TO
10 WEIGHT RATHER THAN ADMISSIBILITY.

11 **THE COURT:** I ALWAYS HATE THOSE REMARKS, IS THAT ALSO
12 FOUND OUT WHEN I WAS PRACTICING A COP OUT FOR A JUDGE WHO
13 DIDN'T REALLY WANT TO STUDY THE RULES ADMITTED GO TO THE
14 WEIGHT, WHAT DOES THAT MEAN?

15 **MR. HOWDEN:** I'VE HAD A LOT EVIDENCE ADMITTED AGAINST
16 MY CASE ON THOSE GROUNDS, I MUST SAY.

17 **THE COURT:** WELL, WHAT WOULD YOU HAVE TO DO TO
18 AUTHENTICATE SOMETHING?

19 JUST ASSUME FOR THE MOMENT THAT U.S. WAS A FOREIGN
20 POWER, SOMETIMES I THINK IT IS, BUT AT ANY RATE, THE U.S.A.
21 WERE A FOREIGN POWER AND YOU HAD TO FOLLOW THESE RULES, AND YOU
22 GO ON THE COURTS, VARIOUS COURTS' WEBSITES AND PULL UP THINGS
23 FROM ECF AND PRESENT THEM, WHAT WOULD YOU HAVE TO DO IN ORDER
24 TO, WOULD YOU HAVE TO STILL HAVE AN AUTHENTICATION?

25 IF YOU COULDN'T GET AN AUTHENTICATION, COULD YOU HAVE

1 SOMEONE WHO'S FAMILIAR WITH THE COURT'S WEBSITES AND WAS USED
2 REGULARLY STATE THAT, YOU KNOW, THIS WOULD APPEAR TO BE A
3 RECORD KEPT IN THE ORDINARY COURSE?

4 **MS. HAMILTON:** WELL, YOUR HONOR, CUSTODIAN OF THE
5 COURT WOULD BE IN THE POSITION TO UNDERSTAND OR TO TESTIFY AS
6 TO THE AUTHENTICITY OF THE DOCUMENTS.

7 **THE COURT:** WELL, BUT SUPPOSE YOU CAN'T GET THAT
8 PERSON.

9 **MS. HAMILTON:** THERE ARE -- SO YOU'RE SAYING, IF AN
10 ATTORNEY THEN WHO HAD SOME EXPERIENCE OR FAMILIARITY FILING
11 UNDER THAT SYSTEM?

12 **THE COURT:** YES.

13 **MS. HAMILTON:** I GUESS, THEY COULD TESTIFY TO THEIR
14 PERSONAL EXPERIENCE, BUT WHETHER THAT PERSONAL EXPERIENCE
15 EXTENDS TO THE PARTICULAR DECISIONS FOR A PARTICULAR CASE, THAT
16 INDIVIDUAL, AT LEAST, THAT WE'VE SEEN, HAD NO INTERACTIONS, HAD
17 NO RESPONSIBILITY OR EXPERIENCE IN THESE PARTICULAR CASES.
18 THIS PERSON HAS BEEN HIRED TO BASICALLY SURF THE WEB.

19 **MS. BOERSCH:** NOT SEARCHING THE WEB, I THINK, WE NEED
20 TO CLEAR UP THIS CHARACTERIZATION. GETTING DOCUMENTS OFF A
21 COURT WEBSITE JUST LIKE THIS COURT HAS A WEBSITE, WITH A
22 FILING SYSTEM, HAPPENS TO BE IN RUSSIA, AND WE HAVE A LICENSED
23 OFFICER OF THE LAW IN RUSSIA WHOSE WILLING TO PROVIDE A
24 DECLARATION THAT HE IS SO LICENSED, AND JUST LIKE ALL OF US
25 HERE HE'S AN OFFICER OF THE COURT, TO EXPLAIN THE COURT

1 RECORDS, DIMENSIONS, MECHANICS OF THE COURT'S RECORDS IN RUSSIA
2 HE OBTAINED THEM.

3 I THINK, THE PROSECUTION TRYING TO SORT OF PROVIDE
4 ANALOGY, THE COURT -- THAT WE JUST GOT THESE OFF OF SOME RANDOM
5 WEBSITE, AND THAT THESE ARE COURT RECORDS, THAT WE HAVE GOOD
6 FAITH LEGAL REASON TO BELIEVE THEY'RE FROM RUSSIAN COURT
7 WEBSITE IN RUSSIA, AND WE HAVE AN OFFICER OF THE LAW WHOSE
8 WILLING TO PROVIDE AN AUTHENTICATION ABOUT THAT PROCESS AND
9 THEIR VIABILITY AND HOW HE OBTAINED THEM.

10 **MR. HOWDEN:** AND THE GOVERNMENT HAS AN OPPORTUNITY TO
11 POKE HOLES IN THAT FOUNDATION IF THEY'RE OF A MIND TO.

12 **THE COURT:** COULD WE NOW, IF YOU HAD THE WEBSITE
13 ADDRESS AND SO FORTH, URL OR WHATEVER IT IS YOU NEED, CAN YOU
14 GO ON HERE AND ACCESS THOSE RECORDS?

15 **MR. HOWDEN:** YES, I BELIEVE SO.

16 **MS. HAMILTON:** ACTUALLY, ONE OF THE POINTS THAT, I
17 THINK, IS OF CONCERN, IS ONE OF THE RECORDS OR FILES THAT WAS
18 BEING PROVIDED TO YOU, PROBABLY THE LETTERS ROGATORY, THAT
19 INDIVIDUAL COULD NOT FIND ON THE WEBSITE, AND SO SAID THE ONLY
20 THING, THE ONLY WAY I THINK THAT THEY'RE RELIANT, THEY HAD ANY
21 RELIANCE ON THE UNDERLYING DECISION, BECAUSE AN APPELLATE
22 DECISION HAD BEEN MADE.

23 **MR. HOWDEN:** NONE OF THE DOCUMENTS WE PROVIDED YOU
24 WERE UNAVAILABLE ON THE WEB. THERE WAS A RELEVANT OPINION THAT
25 WAS NOT AVAILABLE ON THE WEB AND THE RUSSIAN LAWYER MADE NOTE

1 OF THAT FACT AND EXPLAINED HOW. IT'S NOT REALLY RELEVANT HERE.

2 WE DIDN'T PROVIDE YOUR HONOR WITH ANY DOCUMENTS.

3 WE'RE NOT ASKING FOR ANY DOCUMENTS THAT AREN'T AVAILABLE ON THE
4 WEBSITE.

5 **THE COURT:** WELL --

6 **MS. BOERSCH:** WE WERE TRYING TO ANSWER YOUR QUESTION.

7 YES, WE THINK THAT IF WE HAD THE RIGHT -- WE COULD ACCESS THESE
8 RECORDS ON THE INTERNET.

9 **THE COURT:** IF WE UNDERSTOOD RUSSIAN WE COULD READ
10 THEM.

11 **MR. HOWDEN:** YES.

12 **THE COURT:** PRESUMABLY.

13 **MR. HOWDEN:** IF OUR CONNECTION WAS GOOD ENOUGH WE
14 COULD PULL ONE UP RIGHT NOW.

15 **THE COURT:** AND, WELL, INTERESTING QUESTION. FOR
16 EXAMPLE, IF WE WANTED TO FIND OUT A PARTICULAR, WHAT HAPPENED
17 IN A PARTICULAR CASE, WHETHER JUDGMENT WAS ENTERED FOR CERTAIN
18 AMOUNT OR SOMETHING LIKE THAT FROM ANOTHER COURT IN ANOTHER,
19 YOU KNOW, ANOTHER FOREIGN COUNTRY, TEXAS, YOU KNOW, THEN THE
20 EASTERN DISTRICT OF TEXAS, AND THE COURT COULD CERTAINLY PULL
21 THAT UP. I CAN ACCESS ANY OF THOSE COURTS AND PROBABLY YOU
22 CAN, TOO, AND PULL UP A JUDGMENT.

23 COULD I TAKE JUDICIAL NOTICE OF THAT?

24 **MS. HAMILTON:** I DON'T KNOW. I MEAN, I THINK, THAT
25 WE'RE BACK TO MAKING SURE THERE'S A FOUNDATION. THE JUDICIAL

1 NOTICE SHOULD BE MADE, IF THERE'S SOME DEGREE OF
2 TRUSTWORTHINESS.

3 IS THIS REALLY AN OFFICIAL WEBSITE FOR THESE
4 PARTICULAR COURTS?

5 ARE THE COURTS OPERATING IN SUCH A WAY THAT'S SIMILAR
6 TO THE UNITED STATES, THOSE DOCUMENTS ARE TRUSTWORTHY?

7 I MEAN, ONCE THOSE STEPS ARE MADE THEN, PERHAPS, SO.

8 **MR. WARD:** IF WE WERE TO ASK YOUR HONOR TO TAKE
9 JUDICIAL NOTICE OF A DECISION IN THE CENTRAL DISTRICT, I THINK,
10 THAT WOULD BE ONE THING. THERE WOULD BE INDICIA OF
11 TRUSTWORTHINESS.

12 BUT TO SAY, YOUR HONOR, THERE'S A COURT IN RUSSIA
13 UNDER A SYSTEM WE DON'T UNDERSTAND, WE HAVEN'T PRACTICED IN, WE
14 DON'T SPEAK THE LANGUAGE, WE CAN'T ACCESS THE WEBSITE, WE DON'T
15 KNOW HOW THE DECISIONS ARE FILED OR WHAT THEY MEAN, THERE ISN'T
16 THAT SAME INDICIA OF RELIABILITY.

17 AND THE DEFENDANTS HAVE SAID, WELL, WE HIRED THIS
18 LAWYER WHO WILL TELL US, WHO WILL TELL YOU THIS, AN UNTESTED
19 DECLARATION.

20 AND THEN WE HAVE ALL THESE DOCUMENTS WE DON'T KNOW IF
21 THEY'RE FINAL JUDGMENTS, WE DON'T KNOW ENOUGH TO SAY. AT THE
22 END OF THE DAY YOU REALLY HAVE TO TAKE THE DEFENDANTS AT THEIR
23 WORD, WELL, THESE ARE WHAT THEY SAY THEY ARE.

24 **THE COURT:** WHAT ARE THOSE PARTICULAR DOCUMENTS IN
25 QUESTION?

1 YOU CAN PUT IT ON THE RECORD, THEY CONSIST OF WHAT
2 KIND OF DOCUMENTS?

3 **MR. HOWDEN:** THEY ARE THE OPINIONS OF SEVERAL
4 DIFFERENT COURTS HEARING A TOTAL OF THREE CUSTOMS CASES IN
5 MOSCOW. EACH OF THE THREE CASES INVOLVE THE ACTUAL NIGHT
6 VISION GOGGLES THAT ARE AT ISSUE IN THIS TRIAL HERE TODAY.

7 AND MAKE REFERENCE TO THE NATURE OF THE CUSTOMS
8 DISPUTE WITH THE IMPORTER, WHAT WAS DONE BOTH IN MOSCOW AND IN
9 SIBERIA. WHAT THE ULTIMATE ISSUE WAS, WHY CUSTOMS HAD A
10 PROBLEM WITH THE GOGGLES THAT WERE BEING EXPORTED, WHAT THEY
11 DID ABOUT IT AND WHY.

12 INCLUDING THE SPECIFICATIONS OF THE GOGGLES, WHY THOSE
13 SPECIFICATION WERE RELEVANT TO THE LEGAL PROBLEMS THAT THE
14 CUSTOMS SERVICE WAS BRINGING.

15 EVEN IDENTIFIES A TNT COMPANY IN THIS CASE, THE
16 COMPANY WHOSE GOING TO SELL THEM. AND SOME OF THESE SELECTED
17 OPINIONS THEY IDENTIFY BY SERIAL NUMBER PARTICULAR GOGGLES THAT
18 WE CAN ACTUALLY TRACE THROUGH AS BEING GOGGLES THAT WERE
19 SUPPLIED PURSUANT TO THE SUBCONTRACT THAT'S AT ISSUE IN THE
20 CASE.

21 SO CONTAINS A WEALTH OF RELEVANT INFORMATION THAT
22 SERVES SEVERAL KEY PURPOSE IN THIS CASE. AMONG OTHER THINGS IT
23 ESTABLISHES PRETTY CONCLUSIVELY IN MY MIND, AT LEAST, THAT THE
24 GOGGLES THAT WERE IMPORTED WERE NOT ANYWHERE NEAR THE QUALITY
25 THAT MR. ROCKLIN, THE GOVERNMENT'S KEY WITNESS STATED THAT THEY

1 WERE WHEN HE ENTERED INTO THIS AGREEMENT WITH ITE TO PROVIDE
2 THEM. SO DIRECTLY UNDERCUTS HIS CREDIBILITY.

3 THEY'RE ALSO USEFUL TO DISPEL THE NOTION THAT THE
4 RUSSIAN CUSTOMS INVESTIGATION WAS SOMEHOW A PUT UP JOB OR
5 COLORED BY IMPROPER PURPOSE.

6 IT'S CLEAR THAT THERE WAS A GENUINE ISSUE BETWEEN THE
7 CUSTOMS SERVICE AND THE PEOPLE EXPORTING THESE GOGGLES AS TO
8 WHETHER OR NOT THEY REQUIRED A LICENSE. AND THAT DISPUTE WENT
9 ON LITERALLY FOR YEARS AND WASN'T FINALLY RESOLVED UNTIL SOME
10 TIME IN 2008, AND IT WAS ACTUALLY RESOLVED IN FAVOR OF ATN.

11 THEY WERE RIGHT OR NOT, IN FAVOR OF THEIR EXPORTER,
12 BUT THEY WERE ONLY RIGHT BECAUSE THE LOW QUALITY OF THE GOGGLES
13 WHICH WERE MUCH LOWER THEN WHAT MR. ROCKLIN SAID THEY WERE WHEN
14 HE OFFERED THEM FOR SALE TO HIS PRIME CONTRACTOR.

15 **THE COURT:** I THOUGHT WE WENT OVER THE FACT THAT THE
16 QUALITY OF THE GOGGLES REALLY IS NOT AN ISSUE.

17 **MS. BOERSCH:** THEY HAVE BACKED OFF. THEY WERE
18 INITIALLY CLAIMING THAT THE STATEMENTS THAT MR. PRILIK MADE IN
19 THAT REGARD WERE FALSE. THEY BACKED OFF OF THAT NOW TO SUPPORT
20 THEIR THEORY, NOW THAT'S NOT AT ISSUE, IT'S NOT RELEVANT.

21 THEY ARE TRYING TO BRING IT BACK IN, TO SOME EXTENT,
22 IN THE JURY INSTRUCTIONS, WHICH YOU'LL SEE WHEN WE START TO
23 ARGUE OVER THOSE.

24 BUT MORE IMPORTANTLY, I THINK, MR. HOWDEN'S POINT,
25 THIS ISSUE GOES TO THE CREDIBILITY OF MR ROCKLIN, WHOSE GOING

1 TO BE THE PRIMARY WITNESS AGAINST THE DEFENDANT. THAT'S WHAT
2 THIS IS RELEVANT TO.

3 IT GOES DIRECTLY TO HIS, NUMBER ONE, HIS BIAS AND,
4 NUMBER TWO, WHETHER OR NOT HE'S TELLING THE TRUTH WHEN HE
5 CHARACTERIZES THE CONVERSATIONS THAT ARE GOING TO BE PLAYED TO
6 THE JURY IN THIS COURT.

7 GOES ABSOLUTELY DIRECTLY TO ROCKLIN'S CREDIBILITY WHEN
8 HE TESTIFIES TO THOSE TAPES AND HIS CONVERSATION WITH MR. BEKER
9 AND WHAT MR. BEKER WAS SAYING.

10 IT GIVES THE JURY THE INFORMATION IT NEEDS TO EVALUATE
11 THOSE STATEMENTS THAT WERE -- THEY'RE GOING TO HEAR ON THOSE
12 TAPES.

13 **MR. HOWDEN:** IF I MIGHT, AND YOUR HONOR HAS A WHOLE
14 BINDER FULL OF TRANSCRIPTS THAT THE GOVERNMENT PROVIDED YOU
15 WITH WITH RESPECT TO THOSE PORTIONS OF THE CONVERSATIONS IN
16 WHICH MY CLIENT ALLEGEDLY SAYS THAT HE'S RESPONSIBLE FOR ALL OF
17 ATN'S PROBLEMS IN RUSSIA.

18 THESE COURT OPINIONS SHOW WHAT THOSE PROBLEMS WERE AND
19 THE TRUE NATURE OF THOSE PROBLEMS. AND THEY GO A LONG WAY TO
20 DISPELLING THIS SORT OF CLOUD, THAT'S THIS ALLEGED 404(B)
21 MATERIALS THAT THE GOVERNMENT IS ATTEMPTING TO PUT OVER THE
22 DEFENDANTS IN THIS CASE.

23 SO, AGAIN, THEY GO TO MULTI-PURPOSE AND MULTIPLE
24 IMPORTANT REASONS, THE PRINCIPLE ONE BEING MR. ROCKLIN'S
25 CREDIBILITY.

1 **MS. HAMILTON:** WELL, YOUR HONOR, FIRST OF ALL, IN
2 TERMS OF MR. ROCKLIN'S CREDIBILITY, WHAT'S HAPPENING HERE, THE
3 DEFENDANTS ARE TRYING TO PIGGYBACK, AGAIN, THIS CONCEPT TESTING
4 OF THE GOGGLES AND THE QUALITY OF ATN'S GOGGLES VERSUS REALLY
5 ADDRESSING WHAT'S CHARGED, WHAT'S IN THE INDICTMENT.

6 WE'VE BEEN TRYING TO MAKE CLEAR FROM THE BEGINNING,
7 MR. PRILIK MADE CERTAIN STATEMENTS TO THE VICTIM, THE ARMY, AND
8 DIDN'T PROVIDE ALL OF THE INFORMATION.

9 AND THE KEY TO THE STATEMENTS MR. PRILIK MADE ARE NOT
10 WHETHER OR NOT THEY'RE TRUE OR NOT TRUE, WHETHER YOU BELIEVE
11 THEM TO BE TRUE OR NOT, IT'S PART OF THE RUSE. SOME TYPE OF
12 INFORMATION HAD TO BE PROVIDED IN ORDER FOR THE ARMY TO BELIEVE
13 THAT ATN COULD NOT PERFORM.

14 BECAUSE THE DEFENDANTS DID NOT -- WEREN'T -- DID NOT
15 DISCLOSE THE FACT THEY WEREN'T GOING TO PERFORM BECAUSE AN
16 AGREEMENT HAD BEEN REACHED TO PAY ATN TO WITHDRAW ITS TERMS, SO
17 THAT'S THE FIRST PART OF IT.

18 THIS CONSTANT ATTEMPT TO TRY TO ATTACK MR. ROCKLIN
19 VERSUS BECAUSE THERE'S THIS WHOLE OTHER PIECE IS NOT BEING
20 ADDRESSED, WHICH IS THE MATERIAL CONCEALMENTS.

21 AND IN TERMS OF MR. ROCKLIN'S CREDIBILITY, THE
22 CHARACTERIZATION BY THE DEFENDANT THAT HE KNEW OR
23 REPRESENTATIONS HE KNEW THAT THE QUALITY OF THE GOGGLES BEING
24 PROVIDED TO THE ARMY WERE LESS THAN WHAT HAD BEEN CERTIFIED,
25 THIS GETS BACK TO THE TESTING PIECE OF IT.

1 AGAIN, THERE ARE MULTIPLE WAYS OF TESTING. THERE'S A
2 WAY OF TESTING IN RUSSIA, THERE'S A WAY OF TESTING IN THE
3 UNITED STATES, AND MR. ROCKLIN'S CREDIBILITY, AGAIN, FIGHT OVER
4 WHICH IS THE APPROPRIATE STANDARD OF TESTING IN ORDER TO SHOW
5 WHAT MR. ROCKLIN, HIS CREDIBILITY, WHAT IN FACT HE DID BELIEVE
6 WHAT HE SAID, HE WASN'T MAKING MISREPRESENTATIONS.

7 BUT THE ONLY WAY TO GET THERE IS IF BY, AGAIN, MAKING
8 THIS END RUN THROUGH THE TESTING OF THE QUALITY OF THE GOGGLES
9 AND THE TESTING OF THE GOGGLES. DOESN'T GET TO THE POINT,
10 AGAIN, WHICH IS THE MATERIAL CONCEALMENTS.

11 **MR. HOWDEN:** DOESN'T HAVE ANYTHING TO DO WITH THE
12 TESTING. MR. ROCKLIN SAID, ITC, THIS IS GOING TO BE THE
13 QUALITY OF THE GOGGLES WE PROVIDED AND PUT A NUMBER VALUE ON
14 IT.

15 AND THE COURT OPINION DO CONCEDE THE GOVERNMENT'S
16 CERTIFIED STANDARDS FOR THOSE GOGGLES. IN FACT, THE VERY
17 REASON THEY DON'T NEED LICENSES IS THEY DIDN'T MEET THAT
18 NUMBER, THEY MET A MUCH LOWER NUMBER AND DIDN'T COME ANYWHERE
19 CLOSE TO THE QUALITY MR. ROCKLIN CERTIFIES.

20 **THE COURT:** GETTING BACK TO THE QUALITY.

21 **MR. HOWDEN:** CREDIBILITY.

22 **THE COURT:** THE ISSUE WHETHER OR NOT THE DEFENDANTS
23 MADE SOME KIND OF A DEAL WITH ATN, PAY THEM SOME MONEY OR THAT,
24 IN FACT, WOULD BE REFLECTED ULTIMATELY IN THE CONTRACT WITH THE
25 GOVERNMENT.

1 **MS. BOERSCH:** THAT'S NOT THE ONLY ISSUE, AND THIS
2 DOESN'T GO JUST TO QUALITY, GOES TO THE GOVERNMENT'S
3 CONTENTIONS AND THE GOVERNMENT'S THEORY MR. PRILIK WHEN HE'S
4 TALKING TO DMITRY IS CREATING THESE FALSE IMPRESSIONS THAT ATN
5 HAD PROBLEMS GETTING THIS STUFF OUT OF RUSSIA BECAUSE OF ITS
6 CUSTOMS, WELL, WHAT ATN DID, THERE'S NO FALSE IMPRESSIONS
7 THERE.

8 SO IT DIRECTLY REBUTS THE GOVERNMENT'S CONTENTIONS,
9 WHICH YOU'LL SEE IN THEIR JURY INSTRUCTIONS, SOMEHOW THOSE
10 STATEMENTS WERE DELIBERATELY MADE TO CREATE FALSE IMPRESSIONS.
11 THOSE STATEMENTS WERE TRUE AND THAT'S WHAT THIS GOES TO.

12 SO WHEN ROCKLIN SAID, SAYS HE WAS CREATING THAT FALSE
13 IMPRESSION WE WERE HAVING PROBLEMS AND THAT WASN'T TRUE WE WERE
14 NOT HAVING PROBLEMS, IT GOES TO ROCKLIN'S CREDIBILITY, GOES
15 DIRECTLY TO THAT.

16 IT'S MUCH BROADER THAN THAT. DEFINITELY GOES TO
17 ROCKLIN'S CREDIBILITY ON THE CONCEALMENT ISSUE, WHICH THEY KEEP
18 GOING BACK TO.

19 AND THIS, AGAIN, WILL BE RAISED IN THE JURY
20 INSTRUCTIONS, THERE HAS TO BE A DUTY ON OUR PART TO MAKE A
21 DISCLOSURE, WE HAD NO CONTRACTUAL RELATIONSHIP WITH, NONE OF
22 OUR CONTRACTUAL RELATIONSHIP WAS WITH ITE, WE DON'T HAVE ANY
23 DUTIES TO DISCLOSE TO TACOM AND THAT'S GOING TO BE AN ISSUE
24 THAT'S GOING TO HAVE TO BE RESOLVED.

25 **THE COURT:** I DON'T THINK THE CASE LAW SUPPORTS A

1 REQUIREMENT FOR DUTY EITHER.

2 **MS. BOERSCH:** I THINK IT DOES.

3 **THE COURT:** YOU FOUND SOME LANGUAGE THAT WAS AN
4 ENTIRELY DIFFERENT SITUATION?

5 **MR. WARD:** YOUR HONOR IS ABSOLUTELY RIGHT ON THE DUTY
6 TO DISCLOSE, AND COUNSEL IS RIGHT WHEN THEY SAY THIS CASE --
7 ANSWER IS RIGHT THIS CASE IS ABOUT THE CONCEALMENT, THE
8 CONCEALMENT OF MATERIAL INFORMATION FROM PRILIK.

9 NEVER TALK ABOUT THE SECRET AGREEMENT, THE \$350,000
10 PAYOFF, THE AGREEMENT TO PAY HIM 75 BUCKS A GOGGLE WHEN THEY
11 WITHDREW AND NEW CONCEPTS, IN THAT'S THE FRAUD WE ALLEGE, THE
12 FRAUDULENTLY CONCEALED FROM TACOM. IT'S MATERIAL.

13 IT'S NOT ABOUT THE QUALITY OF THE GOGGLES, AS THE
14 DEFENDANTS WANT TO MAKE IT ABOUT THE QUALITY OF THE GOGGLES, IN
15 TERMS OF THE CASES FROM RUSSIA.

16 COUNSEL SAYS THIS RUSSIAN COURT FOUND THEIR GOGGLES
17 DIDN'T MEET THE QUALITY STANDARD AND, THEREFORE, ERGO THEY
18 DIDN'T MEET ATN'S QUALITY STANDARD OR THE ARMY'S QUALITY
19 STANDARDS, ERGO WE DIDN'T INTEND TO DEFRAUD TACOM.

20 IT'S TOO TENUOUS OF A LINK. IT ASSUMES WE DON'T KNOW
21 WHAT STANDARD THEY WERE USING TO TEST GOGGLES IN RUSSIA. THEY
22 UNDERSTAND THERE ARE DIFFERENT TESTING STANDARDS AND HOW ARE WE
23 GOING TO SET THAT UP.

24 ARE WE GOING TO HAVE A MINI-TRIAL OVER WHAT THE
25 RUSSIAN COURT LOOKED AT IN TERMS OF THEIR TEST, TECHNICAL

1 STANDARDS FOR MEASURING THE QUALITY OF THE GOGGLES THEY WANTED
2 EXPORTED.

3 HOW WOULD THAT COMPARE TO THE STANDARD TACOM SAID, HOW
4 DID THAT COMPARE TO WHAT THE U.S. ARMY WANTED?

5 YOU END UP JUST LIKE YOU DID WITH THE EXPERT, YOU HAVE
6 A MINI-TRIAL OFF A TECHNICAL SCIENTIFIC DEBATE OVER HOW YOU
7 MEASURE THE QUALITY OF GOGGLES. AND IT'S NOT AN ISSUE HERE.

8 THE ARMY GOT THE GOGGLES IT WANTED, IT WAS SATISFIED
9 WITH ATN'S GOGGLES. THE DEFENDANTS WERE NOT HAPPY WITH THAT,
10 SO THEY PAID THEM OFF, SO THEY WOULD STEP OUT OF THE WAY, SO
11 THAT THEY COULD STEP IN AND BOOST THE PRICE.

12 **THE COURT:** IS THERE GOING TO BE ANY TESTIMONY FROM
13 MR. ROCKLIN ELICITED BY THE GOVERNMENT ABOUT THE ABILITY TO GET
14 THESE GLASSES OR GOGGLES OUT OF RUSSIA OR INTO RUSSIA, WHATEVER
15 THE PROBLEM WAS IN RUSSIA?

16 **MR. WARD:** THERE IS DISCUSSION IN THE CONVERSATION
17 BETWEEN DMITRY ROCKLIN AND MENDEL BEKER ABOUT THE PROBLEMS THAT
18 ATN WAS HAVING GETTING ITS GOGGLES OUT OF RUSSIA.

19 MR. ROCKLIN BELIEVES THAT THAT THOSE WERE PROBLEMS
20 GENERATED BY MR. BEKER'S COHORTS IN RUSSIA. THE FACT MR. BEKER
21 CONFIRMS AT SEVERAL POINT DURING THE CONVERSATIONS, THE
22 DEFENDANTS HAVE SOUGHT TO KEEP THAT IN.

23 IF THIS COURT WERE TO PREFER WE CAN KEEP ALL OF THAT
24 OUT BECAUSE IT'S NOT RELEVANT TO WHAT'S CHARGED HERE.

25 **THE COURT:** WELL, IF IT'S NOT RELEVANT TO WHAT'S

1 CHARGED HERE, WHY WOULD YOU PUT IT IN?

2 **MS. HAMILTON:** IN TERMS OF, TO EXPLAIN THE
3 CONVERSATIONS BETWEEN MR. BEKER AND MR. ROCKLIN TO PROVIDE
4 CONTEXT.

5 **MR. HOWDEN:** THE GOVERNMENT'S ALLEGED IT'S 404(B)
6 INFORMATION. AS I SAID, THEY PROVIDED YOU WITH ENTIRE BINDER
7 OF TRANSCRIPT AND HIGHLIGHTED PORTIONS THAT GO TO THAT.

8 **MS. HAMILTON:** WE ACTUALLY MADE THAT SPECIFIC POINT
9 THIS PART WAS INTERTWINED.

10 **THE COURT:** IT SEEMS LIKE YOU CAN'T HAVE IT BOTH WAYS.
11 IN FACT, YOU'RE GOING TO PRODUCE THAT EVIDENCE, THEY'RE GOING
12 TO HAVE TO BE ABLE TO REBUT IT AND SAY, IN FACT, THAT WAS NOT
13 WHAT WAS INTENDED, SO ON AND SO FORTH.

14 **MS. HAMILTON:** YOUR HONOR, WE CAN, I THINK, SAFELY SAY
15 WE CAN EXCISE THAT PART OUT OF THE CASE IN CHIEF.

16 **MR. HOWDEN:** I WANT TO STRESS, I'M NOT INTERESTED IN
17 GOING INTO TESTING TECHNIQUES, I'M TALKING ABOUT -- AND HOW
18 THESE THINGS WERE MEASURED IN RUSSIA AND HOW THINGS WERE
19 MEASURED IN THE UNITED STATES.

20 MR. ROCKLIN SAID IN HIS CONTRACT THIS IS THE NUMBER
21 QUALITY, NOT THE ONES THAT WERE IN THE SPECIFICATIONS EITHER,
22 THIS IS THE NUMBER, THE PHOTO SENSITIVITY OF THESE ARE GOING TO
23 BE 600. AND THE COURT RECORDS SAYS YOU CAN'T EXPORT THESE AND
24 WE'RE GOING TO LET YOU OFF THE HOOK BECAUSE IT'S ONLY 350
25 MAXIMUM, THEREFORE, YOU CAN EXPORT THEM WITHOUT A LICENSE.

1 THE TWO ARE COMPLETELY INCONSISTENT, AND TO THE EXTENT
2 MR. ROCKLIN SAYS I TOLD MY CONTRACTOR TRUTHFUL INFORMATION
3 ABOUT THE QUALITY OF THE GOGGLES, THAT'S JUST NOT TRUE.

4 **THE COURT:** ARE WE TALKING ABOUT THE ITE NOW AND
5 RUSSIA?

6 **MR. HOWDEN:** NOT ITE IN RUSSIA, WE'RE TALKING ABOUT
7 THE PRODUCT ROCKLIN WAS SUPPLYING THAT EVENTUALLY WENT TO THE
8 UNITED STATES MILITARY.

9 HE HAD TO STATE WHAT THE QUALITY OF THOSE GOGGLES
10 WERE, AND HE MADE VARIOUS REPRESENTATIONS ABOUT THE QUALITY AND
11 THEY WEREN'T TRUE AND THE COURT RECORD SHOW THEY WEREN'T TRUE.

12 **MS. HAMILTON:** JUST TO MAKE IT VERY CLEAR, THOUGH,
13 MR. HOWDEN'S ARGUMENT THE REASON WHY THERE'S A PROBLEM IN
14 RUSSIA, THE GOGGLES WERE MEASURED BY PHOTO SENSITIVITY NUMBERS,
15 THEY USE DIFFERENT TERMS, SIGNAL TO NOISE RATIO.

16 AND, AGAIN, IT'S TIME TO CONFLATE THE TWO, THE WAY
17 THEY'RE MEASURED AND THE NUMBERS THAT ARE TAKEN. NOT EVEN A
18 TEST OF MEASUREMENT THAT'S USED IN THE RUSSIA SYSTEM.

19 AGAIN, WE'RE GOING TO GET BACK TO THIS CONSTANT DEBATE
20 AND FIGHT ABOUT WHAT THE TESTING METHODOLOGY WAS.

21 **THE COURT:** THE QUESTION WHETHER OR NOT ANY OF THESE
22 REPRESENTATIONS MADE TO THE U.S. GOVERNMENT WERE BY MR. ROCKLIN
23 WERE INCORRECT AND FALSE, AND CERTAINLY THEY HAVE -- THEY'RE
24 ENTITLED TO TRY TO IMPEACH HIM ON THOSE.

25 NOW, I DON'T KNOW TO WHAT EXTENT IN ORDER TO DO THAT

1 IT REQUIRES GOING BEHIND THE NUMBER THAT HE GAVE THEM OR THE
2 INFORMATION HE GAVE THEM, BUT IT SOUNDS TO ME, JUST FOR
3 IMPEACHMENT PURPOSE AND NOT FOR PROVING UP ANY OF THE ACTUAL
4 CHARGES HERE. AM I CORRECT?

5 **MR. HOWDEN:** THAT'S CORRECT.

6 **THE COURT:** SO I DON'T KNOW IF YOU CAN AVOID THAT
7 PROBLEM. I MEAN, IF IN FACT YOU DON'T, IS THERE A WAY OF
8 TRYING IT WITHOUT ELICITING THE KIND OF TESTIMONY THAT WOULD
9 THEN MAKE THAT RELEVANT?

10 BECAUSE OTHERWISE MIGHT BE IMPEACHMENT ON COLLATERAL
11 MATTERS.

12 **MR. WARD:** I THINK WE --

13 **THE COURT:** JUST CAN'T LET IT IN AND HAVE HIM TESTIFY
14 ABOUT IT IF, IN FACT, THERE'S IMPEACHING EVIDENCE. EVEN THOUGH
15 IT MAY COME TO, YOU KNOW, A COUNTRY WE CAN'T GET ANYTHING FROM.

16 **MR. HOWDEN:** I THINK, IT'S IMPEACHMENT.

17 **THE COURT:** MAYBE ENTITLED TO GO INTO.

18 **MR. HOWDEN:** WHETHER OR NOT THE GOVERNMENT ELICITS
19 THAT TESTIMONY, THE FACT OF THE MATTER IS, THAT WE BELIEVE AND
20 WE CAN PROVE MR. ROCKLIN MADE FALSE STATEMENTS.

21 **THE COURT:** TO WHOM?

22 **MR. HOWDEN:** BOTH THE ARMY AND HIS PRIME CONTRACTOR
23 ITE.

24 **THE COURT:** THE DOCUMENTS IN RUSSIA WERE TO THE,
25 WRITTEN BY MR. ROCKLIN, HIS NAME APPEARS NO WHERE IN THOSE

1 DOCUMENTS, THOSE ARE REPRESENTATIONS MADE BY A BROKER HIRED BY
2 ATN TO PROVIDE TO EXPORTERS OF THE GOGGLES INTO THE UNITED
3 STATES.

4 IS THE NOTION THAT, IN FACT, MR. ROCKLIN, THAT MATTERS
5 THAT ROCKLIN REPRESENTED TO THE U.S. GOVERNMENT, TO TACOM, OR
6 THROUGH -- WOULDN'T BE A CONTRACTOR TO TACOM, THAT THOSE ARE
7 CONTRADICTED BY STATEMENTS THAT HE MADE IN RUSSIA?

8 **MR. HOWDEN:** NOT STATEMENTS HE MADE, FINDINGS OF THOSE
9 COURTS AS TO WHAT THE VALUES HE WAS IMPORTING AND SAID HE WAS
10 IMPORTING, WHAT THEY REALLY, WHAT THE VALUES OF THEM REALLY
11 WERE.

12 **MR. OSTERHOUDT:** THERE IS THE VALUE OF THEM, THAT'S
13 WHAT IT IS.

14 **MR. HOWDEN:** WE'RE NOT TALKING ABOUT FOM, WE'RE NOT
15 REFERRING TO FOM AT ALL, WE'RE TALKING ABOUT PHOTOCATHODE
16 SENSITIVITY. NO ISSUE IN THE CASE IT'S MEASURED DIFFERENTLY IN
17 RUSSIA AND DIFFERENTLY IN THE UNITED STATES. IT'S THE SAME
18 EVERYWHERE.

19 THE RUSSIAN COURT SAID THESE WERE MAXIMUM 350,
20 MR. ROCKLIN SAID TO EVERYBODY, NO, THEY'RE REALLY 600.

21 **MS. HAMILTON:** WHAT MR. ROCKLIN SAID, HERE'S
22 CERTIFICATION FROM MY SUPPLIER WHO CERTIFIES THIS IS THE
23 NUMBER, THAT IT MEETS THE CONTACT SPECIFICATION. HE RELIED ON
24 HIS SUPPLIER WHO WAS TESTING AND PROVIDING THE INFORMATION AND
25 WHAT THE INFORMATION CONTAINED IN RUSSIA WAS.

1 WE HAVE NO IDEA WHETHER ATN SAW THOSE REPRESENTATIONS
2 OR WAS PART, THEY WEREN'T A NAMED PARTY TO THESE PROCEEDINGS.
3 AND SO IT BECOMES KIND OF A, AGAIN, ATTENUATED TO SOMEHOW TAKE
4 THESE PROCEEDINGS IN RUSSIA, AND WHICH ATN WASN'T A PARTY, ATN
5 MADE NO REPRESENTATIONS IN ANY OF THOSE PROCEEDINGS, AT LEAST,
6 THAT WE'VE SEEN FROM THE DEFENDANT'S PRODUCTION, AND THEN TRY
7 TO TAKE THAT AND BOOTSTRAP IT ON IN A WAY TO IMPEACH
8 MR. ROCKLIN.

9 THERE'S THE CUSTOM'S DECISIONS, WE DON'T KNOW IF ATN
10 WAS INVOLVED. CERTAINLY NO STATEMENTS FROM, MR. ROCKLIN MADE
11 NO STATEMENTS. THERE IS THE ONLY STATEMENTS HE RELIED ON WERE
12 THOSE BY HIS SUPPLIER. THAT WAS THE INFORMATION THEN PROVIDED
13 TO THE MILITARY TO SHOW WHAT THE BASIS FOR THEIR MEASUREMENTS,
14 THE REPRESENTATIONS MADE BY ATN TO BE.

15 **MR. WARD:** I THINK, IT'S INCORRECT TO SAY, WELL, THIS
16 COURT FOUND THIS AND, THEREFORE, THE PHOTOCATHODE SENSITIVITY
17 WAS THIS AND, THEREFORE, HE'S LYING.

18 YOU THINK YOU'D HAVE TO MAKE THREE OR FOUR STEPS TO
19 SAY, WELL, WHEN YOU MULTIPLY THIS BY THIS FACTOR, AND YOU DON'T
20 USE SIGNAL TO NOISE BUT YOU USE PHOTOCATHODE SENSITIVITY, YOU
21 MULTIPLY IT BY RESOLUTION, WE ADD UP THESE NUMBERS AND COMES
22 OUT AT 350 AND NOT 600.

23 DOESN'T TAKE INTO ACCOUNT DIFFERENT TESTING
24 METHODOLOGY, THE USE OF A DIFFERENT STANDARD. NOTHING IN THE
25 TACOM CONTRACT REFERRED TO PHOTOCATHODE SENSITIVITY, NOTHING

1 REFERS TO A FOM, WHICH IS A DIFFERENT STANDARD THEN WHAT I
2 UNDERSTAND MR. HOWDEN SAYS THE COURT IN RUSSIA CONCLUDED.

3 SO YOU HAVE TO GET FROM PHOTOCATHODE SENSITIVITY TO
4 FIGURE OF MERIT FOM AND HOW ARE WE GOING TO GET THERE. WHAT'S
5 THE RELIABILITY. WE COULD CALL A BUNCH OF EXPERTS WHO COULD
6 TALK ABOUT THE DIFFERENT WAYS TO MEASURE THAT.

7 **THE COURT:** WE'VE BEEN DOWN THAT ROAD.

8 **MR. HOWDEN:** THAT'S NOT WHAT I INTEND TO DO. WE'RE
9 TALKING ABOUT THE NUMBERS ACROSS THE BOARD, WE'RE NOT TALKING
10 ABOUT THE SPECIFICATION IN THE CONTRACT.

11 WE'RE TALKING ABOUT A DIFFERENT SINGLE MEASURE OF
12 QUALITY MR. ROCKLIN SAID INCLUDING IT IN THE NUMBER THAT HE
13 PROVIDED BOTH TO HIS SUBCONTRACTOR AND TO THE ARMY, MY TUBES
14 WILL MEET THIS NUMBER FOR PHOTOCATHODE SENSITIVITY.

15 THE RUSSIAN COURT SAID YOU GET TO EXPORT THESE TO THE
16 UNITED STATES BECAUSE IF PHOTOCATHODE SENSITIVITY IS ALMOST
17 HALF WHAT YOU'RE REPRESENTING OVER THERE. AND THERE'S NO
18 COMPUTATION INVOLVED, SAME NUMBERS, THE SAME MEASUREMENT.
19 THERE'S NO ALLEGATION THEY'RE MEASURED DIFFERENTLY IN RUSSIA
20 AND MEASURED DIFFERENTLY HERE.

21 WHAT MR. ROCKLIN SAID ABOUT HIS PRODUCT WHEN HE SOLD
22 THEM BOTH TO ITE AND TOLD THE MILITARY OR ALLEGED TO THE
23 MILITARY, WHAT KIND OF QUALITY.

24 **THE COURT:** IS ANY OF THIS WHAT WE'RE GOING TO SEE IN
25 THE RUSSIA RECORD PREMISED ON WHAT MR. ROCKLIN TOLD?

1 **MR. HOWDEN:** NO. IT MAKES CLEAR REFERENCE TO THE
2 CONTRACT BETWEEN ATN AND THE SUPPLIER IN RUSSIA WHO'S GOODS ARE
3 BEING SEIZED AT THE VERY TIME, AT THE VERY TIME THAT
4 MR. ROCKLIN IS TALKING TO MR. BEKER ON THE PHONE AND SUPPOSEDLY
5 ACCUSING HIM OF ORCHESTRATING THIS PROBLEM THAT HE'S HAVING IN
6 RUSSIA.

7 AND, AGAIN, WE CAN TIE THESE SAME GOGGLES, SAYS IT
8 FLAT OUT THESE GOGGLES ARE BEING SENT FROM MOSCOW TO ATN FOR A
9 CONTRACT, GIVES SERIAL NUMBERS, WE CAN TRACE THOSE SERIAL
10 NUMBERS THROUGH TO THE ACTUAL GOOGLES WERE PRODUCED IN IRAQ.

11 AND, YOU KNOW, DON'T EVEN CARE WHAT THE ACTUAL MINUTES
12 ENDED UP SAYING, THE POINT IS THAT DEMONSTRATE THAT WHAT WAS AT
13 ISSUE WAS THESE GOGGLES, THAT INDISPUTABLY HAD A MAXIMUM VALUE
14 PHOTOCATHODE SENSITIVITY OF 350 WERE BEING SHIPPED TO ATN IN
15 CONNECTION WITH THIS CONTRACT, THE CONTRACT THAT'S AT ISSUE
16 HERE.

17 OKAY. WELL, I THINK, WHAT YOU HAVE TO DO IS PUT A
18 PROFFER IN WRITING.

19 **MR. HOWDEN:** VERY GOOD.

20 **THE COURT:** YOU CAN RESPOND TO IT.

21 **MS. HAMILTON:** THANK YOU.

22 **THE COURT:** BUT, YOU KNOW, ONE OF THE OTHER PROBLEMS,
23 IS WE DON'T KNOW WHAT THE -- WHAT THAT COURT IN RUSSIA HAD
24 BEFORE IT TO MAKE DETERMINATION THAT IT MADE. APPARENTLY, NO
25 REPRESENTATION MADE BY MR. ROCKLIN TO THE RUSSIAN GOVERNMENT,

1 RIGHT?

2 **MS. HAMILTON:** THAT'S RIGHT.

3 **THE COURT:** ANYBODY OF A RUSSIAN COURT OR THINKING
4 LIKE THAT, THAT'S A DETERMINATION THAT THEY MADE, AND YOU'RE
5 GOING TO TRY TO IMPEACH HIM WITH THAT, BUT THIS HAS NOTHING TO
6 DO WITH ANYTHING HE EVER SAID.

7 **MR. HOWDEN:** HE CAN SAY THAT I DIDN'T KNOW OR I RELIED
8 ON MY SUPPLIER, HE'S ENTITLED TO SAY THAT. BUT I'M ALSO
9 ENTITLED TO SHOW CIRCUMSTANTLY HE HAD TO KNOW AND THAT WHEN
10 HE MADE THESE OTHER REPRESENTATIONS, BOTH TO THE GOVERNMENT AND
11 TO IT, THAT AT BEST HE'S BEING DISINGENUOUS ABOUT HIS
12 REPRESENTATIONS.

13 **THE COURT:** WELL, BUT IN ORDER TO GET THOSE RECORDS IN
14 YOU HAVE TO UNDERSTAND THE SOUNDNESS OF THEM AND THE QUALITY OF
15 THEM AND SO FORTH.

16 **MR. HOWDEN:** THAT'S CORRECT.

17 **THE COURT:** THINK THERE'S A REAL PROBLEM.

18 **MR. OSTERHOUDT:** LET US PUT IT IN WRITING, BE AS CLEAR
19 AS POSSIBLE.

20 **THE COURT:** HAVE YOU LOOKED AT THE CASE LAW THAT WOULD
21 ALLOW FOR THAT KIND OF A SUBSTITUTE FOR THE ACTUAL
22 CERTIFICATION REQUIRED BY 902 OR WHAT MAYBE REQUIRED UNDER
23 3505?

24 **MR. HOWDEN:** WE WILL CITE TO YOU WHAT WE HAVE.

25 **THE COURT:** DO YOU HAVE ANYTHING?

1 **MR. HOWDEN:** NOT OFF THE TOP OF MY HEAD.

2 **THE COURT:** HAVE YOU LOOKED TO SEE IF THERE IS
3 ANYTHING? THAT'S WHAT I MEAN.

4 **MR. HOWDEN:** NOT A VERY THOROUGH SEARCH.

5 **THE COURT:** WHEN CAN YOU GET ALL OF THAT IN?

6 **MR. HOWDEN:** EARLY NEXT WEEK. MONDAY OR TUESDAY.

7 **THE COURT:** GET IT IN BY 4:00 O'CLOCK MONDAY.

8 **MR. HOWDEN:** VERY GOOD.

9 **THE COURT:** YOU HAVE TO RESPOND. BUT WE'RE RUNNING
10 RIGHT UP AGAINST THE TRIAL DATE. AND IF IT'S NOT, IF IN FACT
11 IT'S NOT GOING TO BE ADMISSIBLE, THEN WHAT ARE YOU GOING TO DO,
12 YOU STILL CONTINUING TO TRY TO GET WHATEVER YOU CAN GET FROM
13 RUSSIA?

14 **MR. HOWDEN:** WELL, WE WILL TRY TO GET WHAT WE CAN FROM
15 RUSSIA AND WE'LL MOVE AHEAD WITH THE TRIAL.

16 **THE COURT:** ON THE DATE THAT'S NOW SET?

17 **MR. HOWDEN:** I BELIEVE SO, YES.

18 **MS. HAMILTON:** AND IN TERMS OF THE SCHEDULING, IT WAS
19 RAISED BUT I DON'T THINK WE ACTUALLY CAME TO A DECISION ON IT,
20 JUST COUNTING, WE HAVE -- RIGHT NOW LOOKS LIKE WE HAVE SEVEN
21 COURT DAYS, BUT IT SEEMS ALSO, AT LEAST, THERE'S BEEN CONSENSUS
22 PROBABLY 10, NOT COUNTING JURY UNDER THE CURRENT SCHEDULE, NOT
23 COUNTING IMPANELING THE JURY, WHAT'S GOING TO BE REQUIRED.

24 SO THAT'S MATH, I THINK, WE CAN ALL AGREE ON, THAT
25 IT'S LESS THAN WHAT WE BELIEVE WILL TAKE IN ORDER TO COMPLETE

1 THIS CASE.

2 **MR. HOWDEN:** THAT'S WHY WE ASK THE COURT'S ASSISTANCE
3 IN TRYING TO ENLARGE THE AMOUNT OF TIME WE HAVE TO TRY THIS
4 CASE AND STILL BE DONE BY DECEMBER 2ND. PERHAPS, GOING LONGER
5 DURING THE DAY OR CONSIDERING OTHER DAYS TO INCLUDE IN THE
6 TRIAL.

7 **MR. OSTERHOUDT:** I THINK, THE TRIAL HAS BEEN EFFECTED
8 BY SOME THE COURT'S RULINGS. WE HAD SOME EXPERT TESTIMONY WE
9 THOUGHT WAS RELEVANT THAT YOUR HONOR DIDN'T THINK THAT AND
10 THAT'S FINE. SO, I THINK, EVERYBODY DOING THE BEST THEY CAN TO
11 TRIM THE CASE, BUT MAYBE WE COULD USE A LITTLE ASSISTANCE IN
12 THAT REGARD TO TRY TO GET IT ALL IN.

13 **MR. WARD:** JUST OUR UNDERSTANDING IS THAT WE WOULD
14 PICK A JURY ON WEDNESDAY THE 10TH, THE 11TH IS VETERAN'S DAY,
15 SO WE'RE OFF THE 12TH, THAT FRIDAY WE AGREE WE'RE OFF BECAUSE
16 IT'S A FRIDAY, WE DON'T WANT TO KEEP THE JURORS HERE.

17 **THE COURT:** WE DON'T HAVE TO, WE COULD BRING THEM BACK
18 ON FRIDAY.

19 **MR. WARD:** POSSIBILITY. GIVES US FOUR DAYS THE
20 FOLLOWING WEEK.

21 **THE COURT:** THEY'LL GET MAD AT ME.

22 **MR. WARD:** FOUR DAYS, ONE DAY THE FOLLOWING WEEK
23 THAT'S THE 23RD BECAUSE THEN YOU HAVE THE 24TH WEDNESDAY BEFORE
24 THANKSGIVING, AND THANKSGIVING AND THE DAY AFTER AND IF WE
25 BRING THEM BACK THE DAY AFTER THANKSGIVING THEY'LL HATE ALL OF

1 US.

2 THEN YOU GOT THE 30TH AND YOU GOT THE 1ST AND YOUR
3 HONOR TALKING ABOUT THE 24TH WHICH IS A WEDNESDAY, IF WE BRING
4 A JURY IN HERE UNTIL 1:30 OR 2:00 ON THE DAY BEFORE
5 THANKSGIVING.

6 **THE COURT:** WOULD IT MAKE MORE SENSE TO JUST TRY THIS
7 THING IN JANUARY?

8 WOULDN'T HAVE ALL OF THESE, WOULDN'T HAVE ALL OF THESE
9 PROBLEMS. YOU MIGHT HAVE MORE ANSWERS TO SOME OF YOUR
10 QUESTIONS WITH RESPECT TO THE RUSSIA RECORDS IF, IN FACT, YOU
11 GET THEM IN AND --

12 **MS. HAMILTON:** WOULDN'T BE SO BROKEN UP.

13 **THE COURT:** WOULDN'T BE SO BROKEN UP, AND ALSO
14 JURIES -- DURING THE HOLIDAY TIME IT'S DIFFICULT TO GET JURIES.

15 **MR. OSTERHOUDT:** MIGHT SOUND -- I DON'T KNOW HOW IT
16 SOUNDS TO YOU, FROM -- I KNOW MR. PRILIK PRETTY WELL OVER THESE
17 MONTHS, HIS SON'S BARMITZVAH THE 16TH OF DECEMBER. IT'S AN
18 ENORMOUS EVENT FOR HIM. I PROMISED HIM THAT -- YOUR HONOR
19 INDICATED YOU DIDN'T THINK APPROPRIATE FOR THE DEFENDANT TO GO
20 HOME, WE CAN GET IT IN.

21 I PERSONALLY THINK BOTH OF THESE GENTLEMEN HAVE
22 ESTABLISHED SUCH A TRACK RECORD BY NOW THEY COULD BE TRUSTED.
23 THEY BOTH HAD -- MR. BEKER HAD HIS PASSPORT WENT TO NEW YORK,
24 HE COULD HAVE GONE TO CANADA, EITHER COULD GET ON A TRAIN AND
25 GO TO CANADA IF THEY WERE DISPOSED TO VIOLATE THE COURT'S

1 ORDER. THAT'S MY GREAT RELUCTANCE HERE TO KICK THE CASE OVER
2 UNTIL JANUARY.

3 I REALLY THINK IT IS VERY, VERY IMMENSE PERSONAL
4 IMPORTANCE, THE FAMILY IS THERE, LIFE IS THERE, THEIR BUSINESS,
5 BUT ABOVE ALL ELSE PERSONAL THINGS LIKE THAT MEANS SO MUCH TO
6 HIM. THAT'S THE REASON, THAT'S WHAT MOTIVATES ME TO HOPE WE
7 CAN GET IT IN.

8 UNLESS WE CAN ARRANGE TO ALLOW THEM TO DO THAT UNDER
9 WHATEVER TERMS WOULD BE SATISFACTORY TO THE COURT AND THE
10 GOVERNMENT.

11 **MR. HOWDEN:** MY CLIENT IS FIRST AND FOREMOST
12 INTERESTED IN HAVING A FULL AND FAIR HEARING OF ALL THE MERITS
13 OF THIS CASE. WE HOPE TO BE ABLE TO DO THAT WITHIN THE TIME
14 ALLOTTED BEFORE DECEMBER 2ND.

15 HE'S BEEN HERE A LONG TIME. HE'S BEEN FAITHFUL TO
16 EVERY ORDER COURT. HE WANTS TO GET THIS OVER WITH ONE WAY OR
17 THE OTHER AND PUT IT BEHIND HIM.

18 TO ASK HIM TO SIT ANOTHER TWO MONTHS BECAUSE IT'S MORE
19 CONVENIENT FOR SCHEDULING PURPOSES IS JUST VERY HARD FOR HIM.
20 IT'S VERY HARD FOR HIM, HIS BUSINESS, HIS FAMILY, IT'S ALL AT
21 RISK.

22 AND THAT'S WHY WE'RE SO ANXIOUS TO GET THE CASE TO
23 TRIAL. IF IT HAS TO BE KICKED OVER, I WOULD ASK THE COURT
24 SERIOUSLY CONSIDER LETTING HIM TRAVEL BACK TO CANADA.

25 I KNOW THE GOVERNMENT IS OPPOSED TO IT VEHEMENTLY. IF

1 HE WANTED TO GO HE COULD HAVE GONE A LONG TIME AGO. HE HAD HIS
2 PASSPORT TIME AND AGAIN. HE DOESN'T NEED HIS PASSPORT TO GO
3 BACK IF THAT'S WHAT HE INTENDS TO DO.

4 LET ME ADD THIS, TOO. BOTH THESE DEFENDANTS, AS A
5 PRACTICAL MATTER, THEY DID WHAT THE GOVERNMENT FEARS, DECIDED
6 NOT TO COME BACK HERE, THEY'RE GOING TO GET THROWN IN JAIL IN
7 CANADA, THEY'RE NOT GOING TO MAKE BAIL, THEY HAVE ANY INTENTION
8 NOT TO COME BACK. THEY WANT TO PUT IN BEHIND THEM, WIN LOSE OR
9 DRAW.

10 SO IF WE ARE GOING TO SERIOUSLY CONSIDER PUTTING IT
11 OVER, I WOULD ASK YOUR HONOR EQUALLY TO SERIOUSLY CONSIDER
12 LETTING THEM TO GO BACK FOR CANADA.

13 **MS. BOERSCH:** SOME PERIOD OF TIME, SO HE CAN GO TO FOR
14 HIS SON'S BARMITZVAH.

15 **MS. HAMILTON:** IN TERMS OF, I THINK, THE FIRST THING,
16 IF THE DEFENDANTS WOULD NOT BE IMMEDIATELY THROWN IN JAIL IF
17 THEY REFUSED TO COME BACK. WE LITIGATED THIS.

18 THE UNITED STATES WOULD HAVE TO FILE ANOTHER REQUEST
19 FOR EXTRADITION, THAT WOULD TAKE -- TOOK 18 MONTHS THIS TIME
20 AND AT THE END BECAUSE THE DEFENDANTS WAIVED THE FINAL STEPS IN
21 ORDER TO COME DOWN HERE.

22 **THE COURT:** COULDN'T YOU WORK OUT AN AGREEMENT FOR
23 WAIVING EXTRADITION?

24 **MS. HAMILTON:** THERE'S NO SUCH AGREEMENT, YOUR HONOR.
25 WE BEEN ACTUALLY THROUGH THIS WITH THE DEFENDANTS PREVIOUSLY

1 WITH THE OFFICE OF INTERNATIONAL AFFAIRS. THERE'S NO WAY UNDER
2 THE TREATY WITH CANADA OR ANY OTHER COUNTRY TO CONTRACT THIS
3 ORDER TO MAKE, SO THE DEFENDANTS CAN AUTOMATICALLY WAIVE SOME
4 EVENT IN THE FUTURE, THAT WOULD THEN PERMIT CANADA TO ARREST
5 THE DEFENDANTS. BOTH SIDES HAVE EXPLORED THIS VERY THOROUGHLY.

6 **MR. OSTERHOUDT:** IT'S TRUE IN A SENSE. ON THE OTHER
7 HAND, A WAIVER EXECUTED SOLEMNLY BY THEM WOULD LEAVE THEM
8 ABSOLUTELY DEFENSELESS IF WE EVER TRIED TO DEFEND AGAINST AN
9 EXTRADITION REQUEST. WHO WOULD LISTEN TO THEM IF THEY'D DONE
10 THIS.

11 WE WENT THROUGH THAT BEFORE. BUT, I MEAN, IT'S JUST
12 SO CLEAR TO ME THAT THEY WOULDN'T DO IT. FOR ONE THING THEY
13 WOULDN'T DO, THEY'VE SHOWN THEIR GOOD FAITH, PRETRIAL THINK
14 WILL SUPPORT THIS PARTICULAR REQUEST. BUT, I MEAN, IF THEY DID
15 DO IT NO COURT WOULD GIVE THEM THE TIME OF DAY, THIS COURT
16 WOULD GIVE THEM THE TIME OF DAY IN CANADA.

17 **MS. HAMILTON:** THAT'S NOT WHAT THE CANADIAN OFFICIAL
18 TOLD US. THEY'VE BEEN VERY CLEAR, EVEN WITH A WAIVER HAS NO
19 LEGAL IMPORT, THE COURTS WOULD NOT, AT LEAST, THAT'S WHAT WE'VE
20 BEEN TOLD, WOULD NOT RECOGNIZE IT OR ENFORCE IT.

21 **MR. HOWDEN:** YOUR HONOR, WE'VE LITIGATED THIS, WE
22 ARGUED IT WITH THE GOVERNMENT. WE THOUGHT WE ACTUALLY HAD
23 WORKED OUT A SOLUTION THAT WOULD PERMIT AFFECTIVELY A WAIVER.

24 BUT I DON'T WANT TO GO THROUGH THAT WHOLE HISTORY
25 AGAIN. THINK THE BOTTOM LINE IS THERE'S NO EFFECTIVE WAIVER OF

1 EXTRADITION.

2 HOWEVER, IF THE DEFENDANTS APPEAR BEFORE YOU AND SWEAR
3 THAT THEY WILL SHOW UP FOR THE DAY OF TRIAL OR WHATEVER DAY YOU
4 ASK THEM TO BE HERE, AND THEN THEY GO BACK TO CANADA AND THEY
5 THUMB THEIR NOSES AT YOU LATER, THEY'RE NOT GOING TO MAKE BAIL
6 IN CANADA. THEY WILL BE IN JAIL. THEY WILL NOT MAKE BAIL.

7 AND EVEN IF THEY'RE PERMITTED TO GO THROUGH THE FULL
8 EXTRADITION PROCEEDINGS IT WILL BE WHILE THEY'RE IN CUSTODY,
9 AND THAT WILL PROMPT THEM TO GET DOWN HERE IN A HURRY. NOT
10 THAT I HAVE ANY FEAR THAT'S WHAT ACTUALLY WOULD HAPPEN.

11 **THE COURT:** WHAT ARE THEY FACING IN TERMS OF
12 PUNISHMENT?

13 **MS. HAMILTON:** DEPENDING UPON THE SENTENCING
14 GUIDELINES AND HOW THEY'RE APPLIED, MR. BEKER FACES -- UP TO
15 108 MONTHS, DEPENDING UPON THE APPLICATION OF THE MONEY
16 LAUNDERING COUNT, MR. PRILIK APPROXIMATELY FOUR YEARS.

17 THE OTHER POINT I WOULD LIKE TO MAKE, TOO, BOTH OF
18 THESE INDIVIDUALS ARE CITIZENS OF OTHER COUNTRIES, WERE BORN IN
19 OTHER COUNTRIES BESIDES CANADA AS WELL.

20 **MR. OSTERHOUDT:** IN THAT CONNECTION MR. BATENSKI VERY
21 REPUTABLE LAWYER IN CANADA AND ALSO COUNSEL FOR MR. BEKER, ALSO
22 SAID THEY WOULD RETAIN THE PASSPORT MR. PRILIK WILL BE ALLOWED
23 TO TRAVEL ON, THEY WOULD RETAIN AS OFFICERS OF THE COURT, THEY
24 WOULD KEEP IT THERE.

25 THEY EXECUTED DOCUMENTS SAYING THAT AND THEY WOULDN'T

1 GIVE IT BACK UNTIL IT'S TIME TO COME BACK AGAIN. AND, I THINK,
2 THESE GENTLEMEN HAVE SHOWN THEY CAN BE TRUSTED.

3 YOU DIDN'T KNOW THEM BEFORE, THE GOVERNMENT DIDN'T
4 EITHER FOR THAT MATTER. THEY'VE SHOWN THEY CAN BE TRUSTED,
5 MOST OF THE 18 MONTHS WAS SPENT, A LOT OF TIMES WE WERE TRYING
6 TO CONVINCE THE GOVERNMENT OF VERY POINT THE DEFENDANTS NOT --
7 THEY ALSO WANT TO RESIST EXTRADITION AND FIGHT FOREVER.

8 WE HOPED THEY COULD WORK SOMETHING OUT THEIR ATTORNEYS
9 TO BE ABLE TO COME BACK HERE AND GO HOME TO THEIR WIVES, AND
10 CHILDREN, AND BUSINESS, AND RELIGIOUS ACTIVITIES, THEY
11 COULDN'T, SO THEY CAME HERE ANYWAY.

12 I DO FEEL THEY HAVE A TRACK RECORD, RESPECTFULLY TO
13 YOUR HONOR, THEY WOULD NOT RUN AWAY.

14 **MS. BOERSCH:** I THINK, PARTICULARLY SINCE THIS WHOLE
15 TIME HAVE BEEN ABLE TO GO TO CANADA WITHOUT THEIR PASSPORT AND
16 THEY HAVEN'T. IT'S NOT THEY'VE BEEN HERE, THEY'VE BEEN ABLE TO
17 TRAVEL THEY COULD HAVE GONE, THEY HAVEN'T.

18 **MR. HOWDEN:** I HAVE TO CLARIFY FOR THE RECORD, YOUR
19 HONOR, MY CLIENT IS ONLY A CITIZEN OF CANADA, HE'S NOT A
20 CITIZEN OF ANY OTHER COUNTRY AND HAS NO PASSPORT TO ANY OTHER
21 COUNTRY.

22 HE'S HAD THAT PASSPORT ON, AT LEAST, TWO OCCASIONS
23 WHEN HE'S TRAVELED, WITH THE COURT'S PERMISSION, TO GO TO
24 BUFFALO, NEW YORK, TO CLEVELAND AND OTHER POINTS, HE'S VERY
25 CLOSE TO THE CANADIAN BORDER. HE PROMISED YOU HE'D COME BACK

1 AND HE DID COME, HE PROMISED YOU AGAIN HE WILL COME BACK.

2 **MS. BOERSCH:** MR. PRILIK'S ISRAELI PASSPORT IS EXPIRED
3 AND IN THE CUSTODY OF THE CANADIAN AUTHORITIES.

4 **MR. OSTERHOUDT:** I HAVE HIS U.S. PASSPORT.

5 **MS. HAMILTON:** THE OTHER FACTOR THAT'S DIFFERENT HERE,
6 THEY'VE NOW HAD ACCESS TO THE DISCOVERY, THEY SEE THE EVIDENCE,
7 WHICH IS NOT WHERE THEY WERE PREVIOUSLY.

8 **MS. BOERSCH:** I DON'T KNOW THAT'S, FRANKLY, NOT TO USE
9 A PUN, VERY WEIGHTY CONSIDERATION, GIVEN THEY'RE TAKING
10 ADVANTAGE OF THEIR CONSTITUTIONAL RIGHT TO A JURY TRIAL.

11 THEY WANT VERY MUCH TO EXERCISE THAT RIGHT. THEY WANT
12 TO DO IT, AS MR. HOWDEN VERY ELOQUENTLY SAID, BOTH THESE
13 GENTLEMEN WANT A FULL AND FAIR OPPORTUNITY TO PUT THEIR CASE
14 ON, AS WELL AS REBUT THE EVIDENCE THAT'S PRESENTED BY THE
15 GOVERNMENT.

16 IT SOUNDS LIKE EVERYBODY IS IN AGREEMENT IT'S GOING TO
17 BE HARD TO DO THIS IN THE TIME ALLOTTED STARTING NOVEMBER 10.

18 **THE COURT:** I'M CONCERNED BECAUSE OF ALL THE GAPS.
19 THERE ARE OTHER MATTERS, AND THE COURT DOES NOT HAVE THIS ONE
20 CASE ON ITS CALENDAR, I KNOW IT COMES AS A SHOCK TO YOU TO FIND
21 THAT OUT.

22 **MR. OSTERHOUDT:** I THOUGHT THIS WAS IT.

23 **MS. MORMAN:** WE THINK IT'S A REASONABLE REQUEST IN
24 LIGHT OF THEIR PERFORMANCE ON PRETRIAL RELEASE. PRETRIAL WILL
25 SUPPORT THIS REQUEST TO ALLOW THEM TO GO, AS MS. BOERSCH

1 SUGGESTED, FOR FINITE PERIOD OF TIME TO CANADA, TO RUN ON A
2 DATE THAT YOU SPECIFY AND REPORT IN A WAY THAT YOU SPECIFY.

3 MR. PRILIK GOING TO BE WITH HIS TWO MINOR CHILDREN,
4 ONE WHOM IS TURNING 13. AND HE'S A DEVOUT JEW, THEY'RE HAVING
5 A BARMITZVAH. HE'S MISSED EVERY OTHER BIRTHDAY, EVERY OTHER
6 HOLIDAY, EVERY OTHER HIGH HOLIDAY THROUGHOUT THE TIME HE'S BEEN
7 HERE.

8 WE THINK COUNSEL FOR MR. BEKER AND COUNSEL FOR
9 MR. PRILIK WE BELIEVE DEMONSTRATED TRACK RECORD, ABILITY TO
10 CONTROL THE TRAVEL DOCUMENTS, THE FACT THEY HAVE COUNSEL IN
11 CANADA, WE DO BELIEVE AND PROFFER WE HAVE THE SUPPORT OF
12 PRETRIAL AND A WILLINGNESS TO COMPLY WITH OTHER TERMS AND
13 CONDITIONS YOU SET.

14 YOU SET A TRIAL DATE ON JANUARY 3RD, THEY'LL BE HERE.
15 IF YOU WANT THEM HERE ON DECEMBER 31ST, THEY'LL BE HERE. BUT
16 IT SOUNDS LIKE THE CONSENSUS FROM YOUR HONOR IN PARTICULAR THAT
17 A TRIAL DATE IN JANUARY IS MORE LOGICAL FOR ALL THE REASONS
18 STATED.

19 AND WE THINK IT'S EQUALLY LOGICAL AND COMPELLING AND
20 SUPPORTED BY THE EVIDENCE TO ALLOW THEM TO TRAVEL BACK TO THEIR
21 HOME UNDER RESTRICTIONS.

22 **THE COURT:** WELL, THE PROBLEM IS I CAN'T GOOD GIVE YOU
23 MONDAYS AT ALL BECAUSE THE CRIMINAL LAW AND MOTION IN THE
24 MORNING AND A CIVIL LAW AND MOTION IN THE AFTERNOON. AND THERE
25 ARE TRO'S THAT COME IN, THERE ARE SOME, AS A MATTER OF FACT,

1 MATTERS WE HAVE PENDING THAT ARE GOING TO HAVE TO GO TO
2 HEARING, EVEN GIVING YOU SOME OF THE AFTERNOONS ON THE LONGER
3 DAY IS GOING TO BE A PROBLEM BECAUSE THERE ARE OTHER
4 EVIDENTIARY HEARINGS THAT ARE GOING TO HAVE TO BE SET AND OTHER
5 MATTERS SET.

6 SO THERE'S THAT PROBLEM. I CAN SEE A REAL CRUNCH
7 COMING AS A RESULT OF THAT AND ALSO THE GAPS WE HAVE WITH
8 RESPECT TO JURORS THIS MONTH.

9 I CAN TELL YOU THAT MOST PEOPLE CELEBRATE THANKSGIVING
10 THE WEDNESDAY BEFORE, THANKSGIVING IS A DISASTER ZONE JUST IN
11 TERMS OF GETTING READY IF YOU'RE HAVING ANY RESPONSIBILITIES AT
12 ALL FOR YOUR THANKSGIVING DINNER.

13 I AVOID THAT BY GOING TO SOMEBODY ELSE'S HOUSE, BUT
14 OTHER PEOPLE MAY NOT BE SO FORTUNATE. THE FRIDAY AFTER
15 THANKSGIVING YOU'RE NOT GOING TO KEEP JURORS HERE.

16 PROBABLY, WE COULD DO THE FRIDAY AFTER THE 11TH, THE
17 11TH IS A HOLIDAY AND SOME JURORS MAY BE UPSET ABOUT THAT, AND
18 THEN TRYING TO JAMB IT ALL IN AND RACE TO GET IT DONE,
19 DOESN'T -- CONCERNS ME BECAUSE I THINK IT'S NOT A VERY FAIR WAY
20 TO RUN A JURY TRIAL.

21 IT WOULD SEEM TO ME THAT IT MIGHT MAKE MORE SENSE TO
22 SET IT IN JANUARY AND FIND SOME TERMS AND CONDITIONS OF
23 RELEASE. THEY DON'T COME BACK HERE THEY'LL BE A WARRANT OUT
24 FROM THE DAY THAT THEY DON'T SHOW UP.

25 AND, YOU KNOW, I THINK WE CAN STILL NONETHELESS GET A

1 WAIVER FROM THEM, AND IF UNENFORCEABLE, AT LEAST, THE COURT
2 WILL ENFORCE IT IN TERMS OF WHEN THEY FINALLY GET BACK HERE, IF
3 THAT'S WHAT SHOULD HAPPEN, BECAUSE THAT'S GOING TO MAKE THINGS
4 MUCH WORSE THAN THE AMOUNT OF TIME YOU'RE TALKING ABOUT THEN
5 ANYBODY MIGHT POSSIBLY GET.

6 **MS. HAMILTON:** TRYING TO DETERMINE WHAT THE TERMS
7 WOULD BE THAT WOULD -- THE WAIVER IS NOT GOING TO BE RECOGNIZED
8 IN CANADA, UNDERSTAND WHAT YOU'RE SAYING YOU'LL BE RECOGNIZING
9 IT AND IF THEY COME BACK THEY'LL BE TREATED ACCORDINGLY.

10 I MEAN, IF THEY ARE PERMITTED TO RETURN I DO THINK
11 THERE HAS TO BE SOME TYPE OF ADDITIONAL BAIL OR SOMETHING TO
12 PROVIDE ADDITIONAL INCENTIVE.

13 **MR. HOWDEN:** MY CLIENT PUT UP \$750,000 IN CASH,
14 THERE'S --

15 **THE COURT:** THAT WOULD BE GONE.

16 **MR. HOWDEN:** THAT'S RIGHT. AND, I THINK, IT'S NOT A
17 GOOD IDEA TO ADD TO THAT AT THIS POINT.

18 **MR. OSTERHOUDT:** MR. PRILIK HAS A \$650,000 LETTER OF
19 CREDIT HE POSTED.

20 **THE COURT:** THAT'S DRAWN ON WHAT?

21 **MR. OSTERHOUDT:** ON THE BANK.

22 **THE COURT:** HIS BANK ACCOUNTS OR BANK ACCOUNTS?

23 **MR. OSTERHOUDT:** BANK.

24 **MR. WARD:** WE'VE ALSO WENT THROUGH THEIR ASSETS, MR.
25 BEKER'S OWNERSHIP OF NEWCON, MR. PRILIK'S ASSETS FROM HIS SALE

1 OF NEWCON, AND WE DON'T SAY IT'S INSIGNIFICANT AMOUNT OF MONEY,
2 OBVIOUSLY, BUT IN TERMS OF THE PERCENTAGE OF YOUR NET WORTH AND
3 WEIGHING THAT AGAINST SERVING TIME IN PRISON IN THE UNITED
4 STATES, WE WEIGHED THOSE CONSIDERATIONS AND DETERMINED, YOUR
5 HONOR DETERMINED IT WAS FINE TO KEEP THEM OUT OF CUSTODY WHILE
6 THEY WERE HERE, BUT INSUFFICIENT GIVEN ALL THE OTHER FACTORS.

7 **MS. MOORMAN:** THERE'S BEEN A SLIGHT CHANGE IN
8 CIRCUMSTANCES WITH THE PASSAGE OF TIME. WE'RE NOW TRYING TO
9 HAVE A TRIAL UNDER REASONABLE CONDITIONS AND, I THINK, FRANKLY,
10 WHAT GOVERNMENT OVERLOOKS IS, ALTHOUGH, THEY MAY HAVE ASSETS,
11 MR. PRILIK AND MR. BEKER HAVE LARGELY NOT BEEN ABLE TO WORK.

12 MR. PRILIK HAS BEEN LIVING IN SAN FRANCISCO, WHICH IS
13 NOT A CHEAP PLACE TO LIVE, EARNING ALMOST NO INCOME AND
14 POSSIBLY NO INCOME.

15 AND SO, I THINK, IF ANYTHING, IF YOU WERE TO EXAMINE
16 HIS ASSETS WHAT YOU WOULD SEE IS SOMEBODY IN WORSE CONDITION
17 THAN HE WAS AT THE TIME OF THE ORIGINAL BAIL DETERMINATION.

18 I THINK \$650,000 TALKING ABOUT CANADA WE'RE NOT
19 TALKING ABOUT THE MALAYSIA WHERE YOU MIGHT REALLY HAVE TROUBLE
20 HAVING COOPERATION FROM THE GOVERNMENT RETURNING THESE TWO
21 INDIVIDUALS.

22 THE CANADIAN AUTHORITIES HAVE ALREADY DEALT WITH THESE
23 TWO INDIVIDUALS, THEY HAVE COUNSEL IN CANADA, VERY ESTEEMED,
24 RECOGNIZED, RESPECTED COUNSEL IN CANADA WHO WILL TAKE CONTROL
25 OF THE CANADIAN PASSPORTS WHILE THEY'RE THERE.

1 AND, I THINK, THE SECURITY IS MORE THAN ADEQUATE
2 ESPECIALLY GIVEN THEIR DEVOTION TO BEING HERE AND THEIR
3 DEVOTION TO PARTICIPATING IN THE CASE. MR. BEKER AND MR.
4 PRILIK WITH US ALL THE TIME, THEY PROCEED BY HAVING INVOLVEMENT
5 IN THE CASE, HE WORKS ON THIS CASE EVERYDAY.

6 **MR. OSTERHOUDT:** THEY DO BELIEVE IN THEIR CASES, THEY
7 DON'T BELIEVE IN THEIR CASES.

8 **MR. WARD:** THEY WORK ON IT EVERY DAY BECAUSE THEY'RE
9 HERE EVERYDAY. I DON'T -- IT'S NOT A DEVOTION TO THE UNITED
10 STATES OR TO THIS CASE PER SE, IT'S BECAUSE THE COURT HAS
11 ORDERED THEM TO BE HERE.

12 AND THE CONCERN THAT WE HAD IS THE SAME THEY HAD THEN,
13 THEY HAVE TIES TO THE FORMER SOVIET UNION. MR. PRILIK FROM
14 MODALVO, HE'S LIVED IN ISRAEL, HE HAS AND MAINTAINS ISRAELI
15 CITIZENSHIP. THE CONCERN TO THE COURT AND CONCERN TO US,
16 MR. BEKER IF I'M CORRECT WAS BORN IN MODALVO, BUT SPENT MANY
17 YEARS IN RUSSIA.

18 THE TAPES ARE ALL IN RUSSIAN. THEY HAVE SIGNIFICANT
19 TIES NOT JUST TO CANADA, BUT TO OTHER PLACES IN THE WORLD.
20 NEWCON OPTICS DOES BUSINESS ALL OVER THE WORLD. THEY HAVE,
21 ACCORDING TO THEIR WEBSITE, A DEALER NETWORK IN HOWEVER MANY
22 DIFFERENT COUNTRIES.

23 **THE COURT:** BUT WE DO HAVE THE EXPERIENCE OF THEM
24 HAVING BEEN HERE FOR A LONG PERIOD OF TIME NOW, THEY HAVE
25 TRAVELED A NUMBER OF DIFFERENT PLACES, THEY CERTAINLY COULD

1 HAVE GONE BACK TO CANADA OR GONE SOMEWHERE ELSE, AND THAT
2 DOESN'T SEEM -- THEY, IN FACT, THEY HAVE GONE TO VERY CLOSE TO
3 THE CANADIAN BORDER AND CAME BACK.

4 **MR. HOWDEN:** MR. BEKER CASE WITH HIS PASSPORT.

5 **MR. OSTERHOUDT:** MR. PRILIK THEY ARE BORN IN MONDALVO,
6 LEFT THERE AT AGE OF 11, HE WAS RAISED AND EDUCATED IN ISRAEL.

7 **THE COURT:** MOST PEOPLE WANT TO GO TO MONDALVO.

8 **MR. OSTERHOUDT:** HE'S CANADIAN CITIZEN, HIS WIFE AND
9 CHILDREN HAVE LIVED THERE FOR MANY YEARS. HE'S A CANADIAN, IS
10 WHAT HE IS, REGARDLESS OF THOSE THINGS. HE DOESN'T HAVE A
11 CURRENT ISRAELI PASSPORT AT ALL. YOU KNOW, I JUST THINK HE'S
12 EARNED THE COURT'S TRUST AND GOVERNMENT'S TRUST, TOO, JUST FOR
13 THIS PURPOSE.

14 **MR. HOWDEN:** I DON'T WANT TO REHASH ALL OF MR. BEKER'S
15 TIES.

16 **THE COURT:** HOW LONG IS IT GOING TO REALLY TAKE TO TRY
17 THE CASE, REALISTICALLY?

18 **MR. OSTERHOUDT:** COMFORTABLY AND GET EVERYTHING IN, I
19 WOULD SAY, TEN TO TWELVE COURT DAYS. MAYBE NOT QUITE THAT
20 LONG.

21 **MS. MOORMAN:** WITH JURY SELECTION.

22 **MR. HOWDEN:** I AGREE, THAT'S ASSUMING THAT DOOR
23 DOESN'T GET OPENED TO EXPERT TESTIMONY OR SOME OTHER COLLATERAL
24 ISSUE. AT LEAST, WHAT APPEARS TO BE COLLATERAL AT THE MOMENT.

25 **MR. WARD:** I THINK, YOU ALSO NEED TO ADD IN SOME TIME

1 FOR JURY DELIBERATION.

2 **MS. MOORMAN:** THAT DOESN'T INCLUDE --

3 **MR. WARD:** DO YOU DISAGREE?

4 **MS. HAMILTON:** NO, I THINK, WE ALL AGREE.

5 **MR. WARD:** TEN TO TWELVE PLUS PICKING THE JURY AND
6 JURY DELIBERATION.

7 **MS. MOORMAN:** THE COURT'S BUSINESS GOES ON WHILE THE
8 JURY DELIBERATES.

9 **MR. OSTERHOUDT:** ONE THING I WOULDN'T WELCOME IS FOR
10 THE COURT TO HAVE TO LEAVE WHILE THE JURY IS DELIBERATING,
11 BECAUSE SOMEBODY COULD TAKE THE VERDICT, BUT A QUESTION WILL
12 ARISE THE COURT BE IN A POSITION TO ANSWER THAT ANOTHER JUDGE
13 MIGHT NOT BE.

14 SO, OBVIOUSLY, IT IS IN OUR INTEREST TO HAVE YOUR
15 HONOR AVAILABLE DURING THE DELIBERATION PROCESS.

16 **MS. HAMILTON:** GIVEN THE --

17 **MR. OSTERHOUDT:** IN JANUARY MS. MOORMAN WILL HAVE TO
18 COME BACK IN JUDICIAL ROBES TO GIVE THE OPENING STATEMENT. I'M
19 SURE YOU WOULDN'T MIND THAT.

20 **MR. WARD:** YOU CAN WEAR THE ROBE WHILE YOU'RE GIVING
21 THE OPENING.

22 **MS. HAMILTON:** THAT'S TOO PREJUDICIAL.

23 **MR. WARD:** WE'LL STIPULATE TO THAT.

24 **MS. MOORMAN:** WE HAVE OUR FIRST STIPULATION. WE HEARD
25 IT HERE.

1 **THE COURT:** WHEN DOES YOUR TERM START?

2 **MS. MOORMAN:** 4TH.

3 **THE COURT:** THERE'S NO WAY, UNLESS WE STARTED IT NEXT
4 WEEK.

5 **MS. HAMILTON:** WE HAVE WITNESSES COMING FROM, I'M NOT
6 SURE WE CAN GET OUR WITNESSES HERE IN TIME.

7 **THE COURT:** BECAUSE WE'RE LOOKING AT PICKING A JURY,
8 EVEN CAME BACK THE FRIDAY AFTER ONE, TWO, THREE, FOUR, FIVE,
9 SIX, SEVEN, EIGHT, IT'S NOT GOING TO WORK. JUST NOT GOING TO
10 WORK.

11 OKAY. SO JANUARY YOUR CALENDARS ARE CLEAR, SO I DON'T
12 HAVE TO WORRY ABOUT ANYTHING ELSE.

13 **MR. WARD:** I'M AVAILABLE AT ALL TIMES IN JANUARY.

14 **THE COURT:** YOU DON'T HAVE ENOUGH TO DO, MR. WARD.
15 I'LL TALK TO MS. HAGUE ABOUT THAT.

16 **MR. WARD:** I THINK, I'M ACTUALLY GOING TO HAVE QUITE A
17 BIT TO DO IN JANUARY.

18 **THE COURT:** EITHER START ON THE 4TH OR THE 11TH?

19 **MS. HAMILTON:** YOUR HONOR, ONE OF THE KIND OF THOUGHTS
20 I HAVE, WE HAVE A PRETRIAL CONFERENCE IN ORDER TO GET TO THE
21 JURY INSTRUCTIONS WHICH HAVEN'T BEEN SUBMITTED, MAKES SENSE, I
22 THINK, TO DO THAT IN JANUARY CLOSER TO THE TRIAL DATE, SO IT
23 WILL ALL BE FRESH AND KIND OF MOVE FORWARD FROM THERE.

24 **THE COURT:** THAT'S PROBABLY TRUE. HOW ABOUT IF WE
25 PRE-TRIED ON THE 5TH OR 6TH AND THEN COME BACK ON THE 11TH FOR

1 TRIAL?

2 **MR. OSTERHOUDT:** THAT WOULD BE FINE WITH US.

3 **THE COURT:** ONE HOLIDAY IN THERE, IT'S A MONDAY, SO
4 YOU'RE NOT GOING TO LOSE ANYTHING, I'LL JUST LOSE A DAY WHEN I
5 DON'T HAVE TO LISTEN TO EXCITING MOTIONS.

6 **MR. OSTERHOUDT:** THEY ARE EXCITING. WHAT TIME ON THE
7 5TH, 2:30?

8 **THE COURT:** YEAH, 2:30.

9 **MR. HOWDEN:** DECIDE THE 5TH OR 6TH?

10 **THE COURT:** I SAID 5TH OR 6TH, TAKE YOUR PICK.

11 **MR. HOWDEN:** 6TH.

12 **THE COURT:** IS THAT ALL RIGHT FOR EVERYBODY?

13 **MS. HAMILTON:** YES.

14 **THE COURT:** THE 6TH AT 2:30. NOW, WHAT YOU'RE GOING
15 TO HAVE TO DO IS WORK OUT SOME TERMS AND CONDITIONS FOR
16 RELEASE. CAN YOU WORK OUT SOMETHING?

17 I WILL CHECK WITH PRETRIAL TONIGHT IF THEY'RE STILL
18 AROUND OR TOMORROW, BUT I'M ASSUMING WE'RE GOING TO HEAR
19 NOTHING NEGATIVE.

20 **MR. OSTERHOUDT:** NO, YOU WON'T HEAR ANYTHING.

21 **THE COURT:** OR ANYTHING NEGATIVE, EXCUSE ME, THAT WAS
22 A DOUBLE NEGATIVE, AND AT LEAST WE'VE HAD THE EXPERIENCE NOW
23 KNOWING THAT THEY WANDERED CLOSE TO THE BORDER AND HAVE
24 RETURNED, RIGHT?

25 AND I'M SURE WE'LL HAVE SET ON THE CALENDAR TO DEAL

1 WITH IT AND HAVE THEM FULLY UNDERSTAND, TO THE EXTENT THAT IT
2 GIVES ME SOME COMFORT, THEY WAIVE EXTRADITION, BUT I DON'T
3 THINK WE'RE GOING TO HAVE ANY PROBLEM WITH THAT. AT LEAST, I
4 WOULD HOPE WE WOULDN'T. BECAUSE, IF SO, I WILL SOCK IT TO
5 THEM.

6 **MR. OSTERHOUDT:** YOU'LL NEVER HAVE TO, MR. LIBBY IS
7 THE PRETRIAL OFFICER AND I HAPPEN TO KNOW FROM ANOTHER CASE HE
8 WON'T BE BACK UNTIL MONDAY. HE'S OUT OF TOWN UNTIL THEN.

9 **THE COURT:** BUT I ASSUME HIS SUPERVISE CAN TAKE A LOOK
10 AT THEIR RECORDS TO SEE IF HE'S EXPRESSED ANY CONCERN AT ALL.
11 SO WE NEED TO PUT THIS, WHAT DO YOU WANT TO DO ABOUT THIS WHOLE
12 ISSUE OF THE RUSSIAN RECORDS?

13 DO YOU WANT TO WAIT AND SEE IF YOU'RE ABLE TO GET
14 ANYTHING?

15 **MR. HOWDEN:** I DON'T THINK THERE'S ANY POINT IN
16 WAITING. WE NEED TO GO FORWARD WITH THE FORMAL PROCESS AND
17 WE'LL HOPE, BUT IN THE MEANTIME I ALSO WANT TO PURSUE THIS
18 ALTERNATIVE BASIS FOR GETTING THEM.

19 **THE COURT:** LET'S SET A DATE FOR BRIEFING THAT AND
20 HAVING A HEARING BEFORE I LEAVE. HOW SOON CAN YOU GET WHAT YOU
21 NEED TO GET IN WITH THE PROFFERS AND TO RELEVANCY, AS WELL AS
22 THE WHOLE ISSUE OF --

23 **MR. HOWDEN:** I LOVE TO HAVE NEXT WEEK TO DO IT, IF I
24 CAN.

25 **THE CLERK:** NOVEMBER 5TH.

1 **THE COURT:** 5TH AT 2:30.

2 **MS. HAMILTON:** THAT WAS DEFENSE SUBMISSION.

3 **THE COURT:** THEN HOW LONG TO RESPOND? DO YOU WANT TO
4 RESPOND TO IT?

5 **MS. HAMILTON:** YES, YOUR HONOR.

6 **THE COURT:** HOW MUCH TIME DO YOU NEED TO RESPOND?

7 **MS. HAMILTON:** NOVEMBER 17TH, THAT TAKES INTO ACCOUNT
8 THE HOLIDAYS.

9 **THE COURT:** ONLY ONE HOLIDAY, ONE DAY. YOU'RE NOT
10 GOING TO WORK ON THAT HOLIDAY, I'LL BE IN HERE. GET IT IN BY
11 THE 12TH.

12 **MS. HAMILTON:** YES.

13 **THE COURT:** BY THE 12TH.

14 **MR. OSTERHOUDT:** GOVERNMENT WILL GET IN THEIR --

15 **THE COURT:** WE DON'T NEED A REPLY, DO WE?

16 YOU CAN ARGUE AT TIME OF THE HEARING AND PUT IT ON FOR
17 HEARING THE FOLLOWING WEEK, WHAT WOULD THAT BE?

18 **THE CLERK:** DO YOU WANT ON A MONDAY?

19 **THE COURT:** NO, MAYBE WHAT'S THE NEXT DAY?

20 **THE CLERK:** THE 16TH OR 17TH?

21 **MS. MOORMAN:** WE'RE ALREADY ON FOR THE 16TH.

22 **THE COURT:** I NEED TO, WHEN DID I SAY TO GET YOUR
23 PAPERS IN? FRIDAY THE?

24 **MS. HAMILTON:** FRIDAY THE 12TH.

25 **THE COURT:** WELL, I GUESS, THAT WILL GIVE US ENOUGH

1 TIME TO READ IT. HOW ABOUT THE 17TH?

2 **MR. HOWDEN:** THAT'S FINE.

3 **MR. OSTERHOUDT:** WHAT TIME?

4 **THE COURT:** 2:30. OKAY.

5 **MR. HOWDEN:** VERY GOOD.

6 **THE COURT:** COULD WE ALSO USE THAT DATE FOR DEALING
7 WITH THE RELEASE AND CONDITIONS AND SO FORTH AND SUBMIT A
8 PROPOSAL BY WHAT DAY, BY THE?

9 **MR. WARD:** 12TH.

10 **MR. OSTERHOUDT:** PROPOSAL FOR RELEASE CONDITIONS.

11 **THE COURT:** SEE IF YOU CAN AGREE ON MOST OF THAT.

12 **MR. OSTERHOUDT:** I THINK SO, TOO.

13 **MR. WARD:** OKAY.

14 **THE COURT:** THE COUNTRY ISN'T GOING TO CAVE IN. MAY
15 CAVE IN AS A RESULT OF NEXT TUESDAY.

16 **MR. HOWDEN:** IF I COULD ASK ANOTHER ADMINISTRATIVE
17 MATTER, MY CLIENT WITHOUT HIS PASSPORT HAS TO HAVE ME SIGN HIM
18 IN EVERY TIME HE COMES IN THROUGH SECURITY DOWNSTAIRS. I'M
19 WONDERING IF THERE'S ANYTHING THE COURT HAS ANY ABILITY TO
20 FACILITATE HIM COMING AND GOING OR NOT. IF YOU DON'T.

21 **THE COURT:** INTO THE BUILDING, RIGHT?

22 **MR. OSTERHOUDT:** BOTH COUNSEL HOLDING THE PASSPORTS,
23 WE COULD BRING THEM, WE COULD GET PERMISSION TO BRING THEM FOR
24 THAT PURPOSE THAT DAY.

25 **THE COURT:** THAT'S FINE. THEY DON'T COME WANDERING IN

1 HERE OTHERWISE.

2 **MR. HOWDEN:** THEY DON'T LIKE TO COME HERE JUST TO COME
3 HERE.

4 **MR. OSTERHOUDT:** WE'RE BACK BEFORE YOUR HONOR ON THE?

5 **MS. HAMILTON:** I JUST GIVEN THAT, WE PUSH THE TRIAL
6 DATE OUT, WE WOULD MOVE TO EXCLUDE TIME UNTIL.

7 **THE COURT:** IS THAT AGREEABLE?

8 **MR. HOWDEN:** YES.

9 **MR. OSTERHOUDT:** YES.

10 **THE COURT:** CONTINUITY OF COUNSEL, CONTINUITY OF
11 JUDGE.

12 **MS. HAMILTON:** THERE'S LETTERS ROGATORY OUT THERE,
13 THERE'S A SEPARATE --

14 **THE COURT:** WELL, EFFECTIVE PREPARATION OF COUNSEL AND
15 FOR THE PENDING DISCOVERY THAT THEY'RE SEEKING FROM OVERSEAS.
16 PUT ALL THAT IN THERE. OR CONTINUITY OF COUNSEL OR JUST
17 CONTINUITY.

18

19 (PROCEEDINGS ADJOURNED.)

20

21

22

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25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 10TH DAY OF NOVEMBER, 2010.

/S/ JAMES YEOMANS

JAMES YEOMANS, CSR, RPR